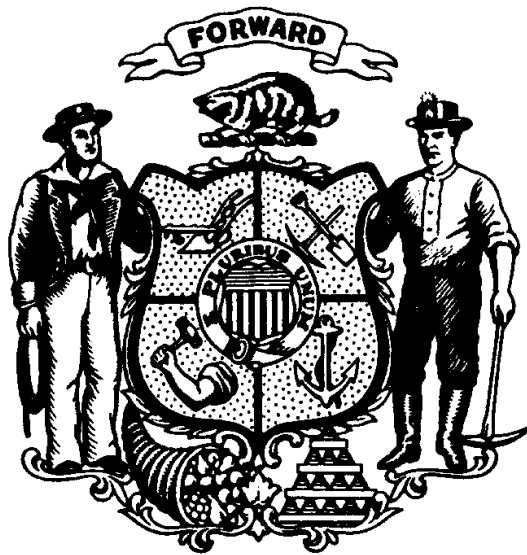


# *WISCONSIN ADMINISTRATIVE REGISTER*

**No. 510**



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## EMERGENCY RULES NOW IN EFFECT

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*Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.*

*Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.*

*Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.*

*Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.*

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### EMERGENCY RULES NOW IN EFFECT (2)

#### Agriculture, Trade & Consumer Protection

1. Rules adopted creating **Ch. ATP 36**, relating to the sale and use of pesticides containing the active ingredient clomazone.

#### Finding of Emergency

(1) Pesticides containing the active ingredient clomazone are used at spring planting on soybeans, tobacco, peppers, pumpkins, peas, cabbage and cucumbers. Clomazone is an effective herbicide which inhibits the formation of chlorophyll in target weeds.

(2) Clomazone is volatile. Off-target movement from clomazone applications can affect non-target plants located hundreds of feet from the application site. Off-target movement from clomazone applications can damage non-target plants by inhibiting the formation of chlorophyll in those plants.

(3) Off-target movement has occurred in many clomazone applications to date. Non-target plants exposed to off-target movement from clomazone applications turn yellow or white. Damage from 1997 clomazone applications was apparently more severe and long lasting than in prior years. In 1997, the department received 49 complaints of off-target movement to non-target plants. These complaints comprised 20% of all pesticide complaints received by the department in 1997. Department field staff report that these complaints represented only a fraction of the total number of clomazone off-target movement incidents that occurred. Off-target movement incidents have caused widespread public anger and concern, and have impaired public confidence in pesticide applications.

(4) The department proposes to adopt rules restricting the use of clomazone herbicides. The proposed restrictions are reasonably designed to reduce or eliminate damage to non-target plants from clomazone applications. Without these restrictions, continued clomazone applications will likely result in continued incidents of off-target movement and nontarget damage during the 1998 planting and growing season.

(5) Clomazone herbicides are commonly applied during spring planting. The department must adopt restrictions by emergency rule in order for those restrictions to take effect prior to the 1998 spring planting and application period. The department finds that an emergency rule under s. 227.24, Stats., is imperatively required to preserve the public peace and welfare in 1998, pending completion of normal rulemaking procedures under ch. 227, Stats.

**Publication Date:** March 15, 1998  
**Effective Date:** March 15, 1998  
**Expiration Date:** August 12, 1998  
**Hearing Date:** April 28, 1998

2. Rules adopted creating **ss. ATP 10.68 and 11.58**, relating to fish farms and imports of live fish and fish eggs.

#### Exemption From Finding of Emergency

(1) The department of agriculture trade and consumer protection is adopting this emergency rule to implement s. 95.60, Stats., which was created by 1997 Wis. Act 27.

(2) Section 9104(3xr) of 1997 Wis Act 27 authorizes the department to adopt this emergency rule without the normal finding of emergency. It further provides that the emergency rule will remain in effect until January 1, 1999 or until a permanent rule takes effect, whichever comes first.

#### Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5)

Statutes interpreted: s. 95.60

This emergency rule implements s. 95.60, Stats., by doing all of the following:

Establishing an interim procedure for registering fish farms in 1998. The department plans to adopt permanent rules, which may differ from this emergency rule, relating to registration of fish farms after 1998.

Establishing interim permit requirements for importing live fish or fish eggs into Wisconsin.

Requiring fish farm operators and fish importers to keep records.

#### Fish Farms

##### Registration

Under s. 95.60, Stats., as enacted by 1997 Wis. Act 27 effective October 14, 1997, the Department of Agriculture, Trade and Consumer Protection (DATCP) is responsible for registering fish farms in Wisconsin. The new annual registration program replaces an annual licensing program previously administered by the Department of Natural Resources (DNR).

DNR licensed more than 2000 fish farms for calendar year 1997. Fish farms previously licensed by DNR must now be registered with DATCP. DATCP's 1998 registration requirement takes effect immediately after DNR's 1997 license requirement expires.

##### Registration Procedures: General

This emergency rule establishes interim fish farm registration procedures. Under this emergency rule:

- No person may operate a fish farm without a DATCP registration certificate. A registration certificate expires on December 31, 1998.

- A registration certificate is effective on the day it is issued except that, if a fish farm operator licensed by DNR in 1997 files a

renewal application with DATCP by April 10, 1998, the DATCP registration certificate is retroactive to January 1, 1998.

- Fish farm registrations are not transferable between persons or locations. A person who operates 2 or more fish farms at non-contiguous locations must obtain a separate registration certificate for each location.

#### Registration Categories

A fish farm operator must hold a type A, B, C or D registration certificate for that fish farm:

- A type A registration is normally required for a fish farm at which the operator does any of the following:

- \*Hatches fish or produces fish eggs at that fish farm for sale or trade to any person.

- \*Allows public fishing, for a fee, for fish hatched at that fish farm.

- A type B registration is normally required if the fish farm operator does any of the following and does not hold a type A registration:

- \*Allows public fishing at the fish farm for a fee.

- \*Sells or trades fish, from the fish farm, to any person.

- A type C registration authorizes the registrant to operate a fish farm. It does not authorize activities for which a type A or B registration is required, except that a type C registrant may do either of the following without a type A or B registration:

- \*Sell minnows to any person

- \*Sell fish or fish eggs to a type A registrant.

- A type D registration authorizes the registrant to sell or trade fish from a fish farm without a type A or B registration if all of the following apply:

- \*The operator does not hatch fish, produce fish eggs or permit public fishing for a fee at that fish farm.

- \*The fish farm consists solely of ponds used to hold or grow fish.

- \*The operator holds a type A or B registration certificate for another fish farm located on a nonadjacent parcel of land.

#### Registration Fees

This emergency rule establishes the following registration fees:

· Type A registration	\$50.00
· Type B registration	\$25.00
· Type C registration	\$ 5.00
· Type D registration	\$ 5.00

School systems operating fish farms must register with DATCP but are exempt from fees. The operator of a fish farm registered for less than a full year must pay the full year's fee.

If an operator was licensed by DNR in 1997, but files a renewal application with DATCP after April 10, 1998, the operator must pay a late renewal fee equal to 20% of the registration fee or \$5.00, whichever is greater.

#### Deadlines for DATCP Action on Registration Applications

If a person licensed by DNR to operate a fish farm in 1997 applies to register that fish farm with DATCP, DATCP must grant or deny the application within 30 days after the applicant files a complete application, including the correct fee, with DATCP. DATCP will deny the application, if the applicant has not filed a 1997 "private fish hatchery annual report" with the department of natural resources.

If a person applying to register a fish farm was not licensed by the department of natural resources to operate that fish farm in 1997, DATCP must grant or deny that person's registration application within 30 days after all of the following occur:

- The applicant files a complete application including the correct fee.

- DNR informs DATCP that DNR has approved the facility.

#### Recordkeeping

This emergency rule requires a fish farm operator to keep the following records for all fish and fish eggs which the operator receives from or delivers to another person:

- The name, address, and fish farm registration number if any, of the person from whom the operator received or to whom the operator delivered the fish or fish eggs.

- The date on which the operator received or delivered the fish or fish eggs.

- The location at which the operator received or delivered the fish or fish eggs.

- The size, quantity and species of fish or fish eggs received or delivered.

A fish farm operator must make these records available to DATCP, upon request, for inspection and copying.

#### Denying, Suspending or Revoking a Registration

DATCP may deny, suspend or revoke a fish farm registration for cause, including any of the following:

- Violating ch. 95, Stats., or applicable DATCP rules.

- Violating the terms of the registration

- Preventing a DATCP employee from performing his or her official duties, or interfering with the lawful performance of those duties.

- Physically assaulting a DATCP employee performing his or her official duties.

- Refusing or failing, without just cause, to produce records or respond to a DATCP subpoena.

- Paying registration fees with a worthless check.

### **Fish Imports**

#### Import Permit Required

This rule prohibits any person from importing into this state, without a permit from DATCP, live fish or fish eggs for any of the following purposes:

- Introducing them into the waters of the state.

- Selling them as bait, or for resale as bait.

- Rearing them at a fish farm, or selling them for rearing at a fish farm.

A copy of the import permit must accompany every import shipment. An import permit may authorize multiple import shipments. There is no fee for an import permit. A person importing a non-native species of fish or fish eggs must also obtain a permit from the department of natural resources.

#### Import Permit Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year in which it is issued, unless DATCP specifies an earlier expiration date.

- The name, address and telephone number of the permit holder who is authorized to import fish or fish eggs under the permit.

- The number of each fish farm registration certificate, if any, held by the importer.

- Each species of fish or fish eggs which the importer is authorized to import under the permit.

- The number and size of fish of each species, and the number of fish eggs of each species, that the importer may import under the permit.

- The purpose for which the fish or fish eggs are being imported.

- The name, address and telephone number of every source from which the importer may import fish or fish eggs under the permit.

- The name, address, telephone number, and fish farm registration number if applicable, of each person in this state who may receive an import shipment under the permit if the person receiving the import shipment is not the importer.

#### Applying for an Import Permit

A person seeking an import permit must apply on a form provided by DATCP. The application must include all of the following:

- All of the information which must be included in the permit (see above).

- A health certificate for each source from which the applicant proposes to import fish or fish eggs of the family salmonidae.

DATCP must grant or deny a permit application within 30 days after it receives a complete application and, in the case of non-native fish DNR approval.

#### Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Violating applicable statutes or rules.
- Violating the terms of the import permit, or exceeding the import authorization granted by the permit.
- Preventing a department employe from performing his or her official duties, or interfering with the lawful performance of his or her duties.
- Physically assaulting a department employe while the employe is performing his or her official duties.
- Refusing or failing, without just cause, to produce records or respond to a department subpoena.

#### Import Records

A person importing fish or fish eggs must keep all of the following records related to each import shipment, and must make the records available to the department for inspection and copying upon request:

- The date of the import shipment.
- The name, address and telephone number of the source from which the import shipment originated.
- The name, address, telephone number, and fish farm registration number if applicable of the person receiving the import shipment, if the person receiving the import shipment is not the importer.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

#### Salmonidae Import Sources: Health Certificates

DATCP may not issue a permit authorizing any person to import fish or fish eggs of the family salmonidae (including trout, salmon, grayling, char, Dolly Vardon, whitefish, cisco or inconnu) unless a fish inspector or an accredited veterinarian certifies, not earlier than January 1 of the year preceding the year in which the applicant applies for the permit, that the fish and fish eggs from the import source were determined to be free of all of the following diseases:

- Infectious hematopoietic necrosis.
- Viral hemorrhagic septicemia.
- Whirling disease, except that eggs from wild stocks need not be certified free of whirling disease.
- Enteric redmouth.
- Ceratomyxosis.

A fish inspector issuing a health certificate must be a fish biologist who is certified, by the American Fisheries Society or the state of origin as being competent to perform health inspections of fish.

The accredited veterinarian or fish inspector must issue a health certificate in the state of origin, based on a personal inspection of the fish farm from which the import shipment originates. In the inspection, an accredited veterinarian or a fish inspector must examine a random statistical sample of fish drawn from each lot on the fish farm. From each lot, the veterinarian or inspector must

examine a number of fish which is adequate to discover, at the 95% confidence level, any disease that has infected 5% of the lot.

**Publication Date:** March 16, 1998

**Effective Date:** March 16, 1998

**Expiration Date:** See section 9104 (3xr) 1997 Wis. Act 27

**Hearing Date:** April 27, 1998

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## **EMERGENCY RULES NOW IN EFFECT**

### **Commerce**

#### **(Petroleum Environmental Cleanup Fund, Ch. ILHR 47)**

Rules adopted revising **ch. ILHR 47**, relating to the petroleum environmental cleanup fund.

### **Finding of Emergency and Rule Analysis**

The Department of Commerce finds that an emergency exists and that adoption of a rule is necessary for the immediate preservation of public health, safety and welfare.

The facts constituting the emergency are as follows. Under ss. 101.143 and 101.144, Stats., the Department protects public health, safety, and welfare by promulgating rules for and administering the Petroleum Environmental Cleanup Fund (PECFA fund). The purpose of the fund is to reimburse property owners for eligible costs incurred because of a petroleum product discharge from a storage system or home oil tank system. Claims made against the PECFA fund are currently averaging over \$15,000,000 per month. Approximately \$7,500,000 per month is allotted to the fund for the payment of claims. The fund currently has a backlog of \$250,000,000 representing almost a 30-month backlog of payments to be made to claimants. Immediate cost saving measures must be implemented to mitigate this problem.

The rules make the following changes to manage and reduce remediation costs:

#### **Administrative Elements.**

These changes include updating the scope and coverage of the rules to match current statutes, clarifying decision making for remedial action approvals and providing new direction to owners, operators and consulting firms.

#### **Progress Payments.**

Progress payments are proposed to be reduced for some owners and sites. The criteria that trigger payments will now also be based on outcomes. The timing of payments from the fund is designed to benefit those that get sites successfully remediated and to create incentives for the use of the flexible closure tools and natural attenuation tools that were created by the Department of Natural Resources. Applications submitted before the effective date of the new rules would still be subject to the current rules.

#### **Remedial Alternative Selection.**

These provisions would create two different paths for funding for sites. Through the use of a group of environmental factors, the risk of a site will be determined. Active treatment systems that use mechanical, engineered or chemical approaches would not be approved for a site without one or more environmental factor present. Approved treatments for sites without environmental factors would be limited to non-active approaches, excavation, remediation by natural attenuation and monitoring of the contamination. The five environmental factors are:

- A documented expansion of plume margin;
- A verified contaminant concentration in a private or public potable well that exceeds the preventive action limit established under ch. 160;
- Soil contamination within bedrock or within 1 meter of bedrock;

- Petroleum product, that is not in the dissolved phase, present with a thickness of .01 feet or more, and verified by more than one sampling event; and

- Documented contamination discharges to a surface water or wetland.

#### Reimbursement Provisions.

Several incentives are added to encourage owners and consultants to reduce costs whenever possible. Provisions are added for the bundling of services at multiple sites to achieve economy of scale and for using a public bidding process to reduce costs. In addition, owners are encouraged to conduct focused remediations that utilize all possible closure tools. To encourage this approach, if a site can be investigated and remedied to the point of closure for \$80,000 or less, the consultant can complete the action without remedial alternative approvals or the risk of the site being bundled or put out for bidding. The consultant is provided additional freedom under the structure of the fund in order to facilitate remediation success. Special priority processing of these cost-effective remediations would also be provided.

#### Review of Existing Sites.

These changes give the Department more ability to redirect actions and impose cost saving measures for sites that are already undergoing remedial actions. Reevaluations including, the setting of cost caps would be done on sites chosen by the Department.

Pursuant to section 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** April 21, 1998  
**Effective Date:** April 21, 1998  
**Expiration Date:** September 18, 1998  
**Hearing Date:** May 29, 1998

## EMERGENCY RULES NOW IN EFFECT (2)

### Department of Commerce

(Building & Heating, etc., Chs. Comm/ILHR 50–64)

(Uniform Multifamily Dwellings, Ch. ILHR 66)

1. Rules adopted revising **chs. Comm 51, ILHR 57 and 66**, relating to commercial buildings and multifamily dwellings.

### Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that adoption of the rule is necessary for the immediate preservation of public health, safety, and welfare.

The facts constituting the emergency are as follows. Under ss. 101.02 (15), 101.12, and 101.971 to 101.978, Stats., the Department protects public health, safety, and welfare by promulgating construction requirements for commercial and public buildings, including multifamily dwellings. Present requirements include methods for stopping fire in one area of a building from spreading to another area through service openings in walls, floors, and ceilings, such as penetrations for plumbing and electrical components. The methods that were specified have been shown to fail under fire testing conditions.

The proposed rule impacts all public buildings, which includes multifamily dwellings, and replaces the failed firestopping methods with techniques, materials, and methods that have been tested and nationally recognized. The rule essentially mandates use of tested and listed fire-stop systems for nearly all penetrations of every wall, floor, and ceiling that is required to provide area-separation protection consisting of either a fire-protective membrane or

fire-resistant rated construction. The rule also clarifies some problematic, technical provisions that have resulted in confusion and unnecessary costs. Without the proposed rule revisions, firestopping methods that have been proven to be ineffective would still be allowed to be utilized, thereby putting public safety and health at risk.

Pursuant to s. 227.24, Stats., this rule is adopted as an emergency rule to take effect upon publication in the official state newspaper and filing with the Secretary of State and Revisor of Statutes.

**Publication Date:** January 28, 1998  
**Effective Date:** January 28, 1998  
**Expiration Date:** June 27, 1998  
**Hearing Date:** March 11, 1998  
**Extension Through:** August 25, 1998

2. Rule adopted revising **ch. ILHR 57**, relating to an exemption of multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators from the accessibility laws.

### Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter ILHR 57, subchapter II, Wis. Adm. Code, establishes design and construction requirements for accessibility in covered multifamily housing as defined in s. 101.132 (1), Stats., formerly s. 106.04 (2r) (a) 4., Stats. The design and construction requirements in ch. ILHR 57, subchapter II, are based on the multifamily accessibility law in s. 101.132, Stats. The state law on accessibility in covered multifamily housing is substantially equivalent to the federal Fair Housing law of 1988. The proposed changes in ch. ILHR 57, subchapter II, are in response to 1997 Wis. Act 237 that exempts multilevel multifamily dwelling units without elevators from the multifamily accessibility law. This state law change does not conflict with the federal Fair Housing law since the federal Fair Housing law does not cover multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators.

The proposed rule eliminates only those sections requiring access to and accessible features within multilevel multifamily dwelling units with separate exterior entrances in buildings without elevators. If the rules are not revised an inconsistency between the statutes and the administrative rules would result. This inconsistency may cause confusion in application and enforcement within the construction industry and may result in construction delays, which may be costly.

**Publication Date:** June 17, 1998  
**Effective Date:** June 17, 1998  
**Expiration Date:** November 14, 1998

## EMERGENCY RULES NOW IN EFFECT

### Commerce

(Barrier-Free Design, Ch. Comm 69)

Rule adopted creating s. Comm 69.18 (2) (a) 2. c., relating to vertical access to press box facilities.

### Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of a rule is necessary for the immediate preservation of public peace, health, safety and welfare. The facts constituting the emergency are as follows:

Chapter Comm 69, establishes design and construction requirements for accessibility in all buildings and facilities. Chapter

Comm 69 is based on the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and Titles II and III of the federal Americans with Disabilities Act. A number of public school districts are in the process of constructing press boxes at athletic fields. In accordance with both the federal and state rules, an elevator must be used to provide access to a press box. This requirement causes a serious financial hardship on the school districts, since the press boxes involved will be very small and will accommodate only a few people. The federal ADAAG standards are in the process of being revised to exempt state and local government buildings that are not open to the general public from providing elevator access to floor levels that are less than 500 square feet and accommodate less than 5 persons.

The Joint Committee for Review of Administrative Rules (JCRAR) held a hearing on March 31, 1998 to receive public comments on the rules in chapter Comm 69 that requires vertical access to press box facilities. On May 6, 1998, the JCRAR held an executive session to consider this issue and has requested the agency to promulgate an emergency rule adopting the federal exemption for certain publicly controlled facilities, such as press boxes, from vertical access for people with disabilities. The emergency rule is to be promulgated no later than May 15, 1998.

The proposed rule eliminates the requirement that in government owned or operated buildings an elevator must be used to provide access to certain small areas with low capacity. The emergency rule benefits not only school districts, but other small state and local government buildings as well.

**Publication Date:** May 15, 1998  
**Effective Date:** May 15, 1998  
**Expiration Date:** October 12, 1998

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## EMERGENCY RULES NOW IN EFFECT

### *Department of Commerce*

**(Financial Resources for Businesses and Communities, Chs. Comm 105 to 128)**

Rule adopted creating **ch. Comm 110**, relating to the Brownfields Grant Program.

### **Exemption From Finding of Emergency**

On October 14, 1997, 1997 Wis. Act 27 took effect. That act created s. 560.13, Stats., which appropriated \$5.0 million in funds for each of the state fiscal years of the biennium that can be distributed by the Department of Commerce in the form of grants for brownfields redevelopment or associated environmental remediation. The act requires the department to promulgate administrative criteria for issuing grants for brownfields redevelopment and associated environmental remediation, prescribing the amounts of grants that may be awarded, and including criteria for the awarding of grants on the basis of projects that promote economic development, positive effects on the environment, the total of and quality of the recipient's contribution to their project and innovative proposals for remediation and redevelopment. The act directs the department to promulgate an emergency rule to begin implementing the Brownfields Grant Program before permanent rules may be promulgated under ch. 227, Stats., and exempts the department from making a finding of emergency. This emergency rule was developed in consultation

with the Department of Natural Resources and the Department of Administration.

**Publication Date:** December 31, 1997  
**Effective Date:** December 31, 1997  
**Expiration Date:** May 30, 1998  
**Hearing Date:** February 12, 1998  
**Extension Through:** July 28, 1998

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## EMERGENCY RULES NOW IN EFFECT

### *Department of Corrections*

Rule adopted amending **s. DOC 328.22 (5)**, relating to custody and detention of felony probationers and parolees.

### **Finding of Emergency**

The Department of Corrections finds that an emergency exists and that a rule is necessary for the immediate preservation of the public safety. A statement of the facts constituting the emergency is: the Milwaukee County Jail has experienced severe overcrowding. The Department of Corrections and the Milwaukee County Sheriff have worked cooperatively to alleviate the crowded conditions that continue to prevail. This rule amendment will serve the purpose of further alleviating overcrowding by allowing any felony probationer to be detained in a Department of Corrections institution. Presently, only felony probationers with imposed and stayed sentences may be detained in a Department facility.

The Wisconsin Supreme Court rule in Sullivan v. Kliesmet, that the Sheriff of Milwaukee may refuse to accept Department of Corrections detainees when severe overcrowding results in dangerous conditions. The Supreme Court delayed the effective date of the Kliesmet decision one year or until June 25, 1998.

Under the authority vested in the Department of Corrections by ss. 227.11 (2), and 973.10, Stats., the Department of Corrections hereby amends s. DOC 328.22 (5), relating to the custody and detention of felony probationers and parolees.

**Publication Date:** March 23, 1998  
**Effective Date:** March 23, 1998  
**Expiration Date:** August 20, 1998

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Health and Family Services*

**(Health, Chs. HSS/HFS 110—)**

1. Rules adopted revising **s. HFS 196.03 (22)**, relating to an exemption from regulation as a restaurant.

### **Finding of Emergency**

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The current Budget Act, 1997 Wisconsin Act 27, effective October 14, 1997, created s. 254.61 (5) (g), Stats., to exempt a concession stand at a "locally sponsored sporting event" from being regulated under ch. HFS 196 as a restaurant. Following enactment of the State Budget, the Department received several inquiries from its own region-based inspectors and local health departments serving as the Department's agents for enforcement of the Department's environmental sanitation rules, including rules for

restaurants, about the meaning of "locally sponsored sporting event." What did the term cover? Did it cover food stands at facilities of locally-owned sports franchises? Were these now to be exempt from regulation under the restaurant rules?

This rulemaking order adds the new exemption to the Department's rules for restaurants and, in this connection, defines both "locally sponsored sporting event" and "concession stand." The order makes clear that the exemption refers only to concession stands at sporting events for youth, that is, for persons under 18 years of age. That interpretation is supported by the statutory phrase, "such as a little league game," that follows the term, "locally sponsored sporting event," in s. 254.61 (5) (g), Stats. The order further narrows the applicability of the exemption by building into the definitions the Department's understanding of who organizes or sponsors an exempt sporting event and on whose behalf a concession stand at the event is operated.

Although the Department's understanding of what "locally sponsored sporting event" should be taken to mean has been communicated to its field-based inspectors and agent local health departments, this is no more than an interpretive guideline, lacking the force of law, until the Department has set out that understanding in its rules for restaurants. Because the process for making the permanent rule change will take several months, the Department is publishing the rule change now by emergency order in the interests of protecting the public's health. The emergency rule order will ensure that, pending promulgation of the permanent rule change, there will be uniform statewide enforcement of the statute change that will prevent any local inspector from exempting from regulation food stands at locally sponsored sporting events for adults.

**Publication Date:** March 14, 1998  
**Effective Date:** March 14, 1998  
**Expiration Date:** August 11, 1998  
**Hearing Date:** May 11, 1998

2. Rules were adopted revising **ch. HSS 138**, relating to subsidized health insurance premiums for certain persons with HIV.

## Finding of Emergency

The Department of Health and Family Services finds that an emergency exists and that the adoption of the rules is necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

Sections 252.16 and 252.17, Stats., direct the Department to operate a program that provides subsidies to cover the cost of health insurance premiums for persons with human immunodeficiency virus (HIV) infection who, because of a medical condition resulting from that infection, must take an unpaid leave from their jobs or are unable to continue working or must reduce their hours of work. The Department has been operating this program since November 1990 under ch. HSS 138 rules.

This order revises ch. HSS 138 to incorporate changes made in the program by the current Budget Act, 1997 Wisconsin Act 27. Act 27 amended s. 252.16, Stats., to change the program in the following ways for individuals who are unable to continue working or who must reduce their hours of work:

The Department is directed to pay the premium costs for any health insurance coverage for an eligible individual, whether group coverage or an individual policy, and not only, as formerly, for continuation coverage under a group health plan if available to the individual.

Program participation is expanded from individuals in families with incomes up to 200% of the federal poverty line to individuals in families with incomes up to 300% of the poverty line, but individuals in families with incomes between 201% and 300% of the federal poverty line are expected to contribute toward payment of the insurance premium.

The Department is directed to pay an individual's premiums for as long as the individual remains eligible for the program and not only, as formerly, for a maximum of 29 months.

The rule changes add rule definitions for dependent, individual health policy, Medicare, subsidy under s. 252.16, Stats., and subsidy under s. 252.17, Stats., and modify rule definitions for employee and group health plan; raise the maximum family income for eligibility for the program to 300% of the federal poverty line; permit an individual to be eligible if covered or eligible for coverage under either a group health plan or an individual health policy; delete the provision that prohibits Medicare-eligible individuals from participating in the program since a Medicare supplement policy is now considered a type of individual health policy; require eligible individuals whose family income exceeds 200% of the federal poverty line to contribute 3% of the annual policy premium toward payment of the premium; and delete the time limit of 29 months after which the Department's payments are to end.

All of the rule changes, except the changes to the definitions, apply only in the case of subsidies under s. 252.16, Stats., that is, for individuals who because of a medical condition related to HIV infection are unable to continue working or must reduce their hours of work.

The rule changes are being published by emergency order so that the program changes made by Act 27 can be implemented quickly for the benefit of persons with HIV infection who are newly eligible for the subsidy or for continuation of the subsidy. Act 27 was effective on October 14, 1997. Implementation of the statutory changes, which is expected to increase the caseload from 50 to about 300, depends upon rule changes. Following determination of what changes were needed in the rules, a statement of scope of proposed rules was published on November 15, 1997. After that the rulemaking order was drafted and decisions were made about language and the expected contribution of some eligible individuals toward payment of the annual premium. The proposed permanent rule changes were sent to the Legislative Council's Rules Clearinghouse for review on March 3, 1998, but because of the length of the permanent rulemaking process will not take effect until August 1, 1998 at the earliest. Earlier implementation of the statutory changes will allow some prospective program clients to maintain health insurance policies they otherwise could not afford. Not having the coverage could result in deterioration of their health.

**Publication Date:** March 28, 1998  
**Effective Date:** March 28, 1998  
**Expiration Date:** August 25, 1998  
**Hearing Dates:** April 22 & 23, 1998

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## EMERGENCY RULES NOW IN EFFECT (4)

### Insurance

1. A rule was adopted revising **s. Ins 18.07 (5) (b)**, relating to a decrease in premium rates for the Health Insurance Risk-Sharing Plan (HIRSP), effective January 1, 1998.

### Exemption From Finding of Emergency

Pursuant to s. 619.14 (5) (e), Stats., the Commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

## Analysis Prepared by the Office of the Commissioner of Insurance

### January 1, 1998 Premium Adjustments

The Commissioner of Insurance, based on the recommendations of the Health Insurance Risk-Sharing Plan ("HIRSP") board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles. This rule adjusts the non-subsidized premium rates

effective January 1, 1998. This change in rates will result in a reduction of approximately 14.5%, and is mandated by plan financing changes in 1997 Wis. Act 27.

**Publication Date:** November 20, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** May 31, 1998  
**Hearing Date:** December 30, 1997  
**Extension Through:** June 30, 1998

2. Rules were adopted amending s. **Ins 18.07 (5) (b)**, published as an emergency rule relating to a decrease in premium rates for the health insurance risk-sharing plan under s. 18.07 (5) (b), and correcting errors in the published rate table.

#### January 1, 1998 Premium Adjustment Correction

The Commissioner of Insurance, based on the recommendation of the Health Insurance Risk-Sharing Plan (HIRSP) board, is required to set the annual premiums by rule. The rates must be calculated in accordance with generally accepted actuarial principles. An emergency rule, already promulgated and published, adjusts the non-subsidized premium rates effective January 1, 1998. This emergency amendment corrects 4 errors in the published rate table.

### Exemption From Finding of Emergency

Pursuant to s. 619.14 (5)(e) Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency amendment to an emergency rule.

**Publication Date:** December 12, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** May 31, 1998  
**Extension Through:** June 30, 1998

3. Rules were adopted amending s. **Ins 18.07 (intro.)**, **(5) (a)** and **(5) (br)** and creating s. **Ins 18.07 (5) (bm)**, relating to the creation of a \$2500 deductible alternative to the health insurance risk-sharing plan effective January 1, 1998.

### Exemption From Finding of Emergency

Pursuant to s. 619.14 (5)(e), Stats., the commissioner is not required to make a finding of an emergency to promulgate this emergency rule.

### Analysis Prepared by the Office of the Commissioner of Insurance

Statutory authority: ss. 227.24, 601.41 (3), 619.11, 619.14 (5)(a) and (e), 619.17 (2) and 619.146

Statutes interpreted: s. 619.146

January 1, 1998 health insurance risk sharing plan with \$2500 deductible.

This change is mandated by 1997 Wis. Act 27 which created s. 619.146, Stats. This section requires that an alternative major medical expense coverage plan be offered with a \$2500 deductible as described in section 2744 (a) (1) (C) of P.L. 104-191. Under s. 619.146 (2) (a) premium reductions do not apply to this alternative plan. Section 619.146 (2) (b) prescribes how the rates for the alternative plan are to be determined. Since the alternative plan is required by law to be offered by January 1, 1998 this emergency rule sets out the rates for that plan.

**Publication Date:** December 31, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** May 31, 1998  
**Extension Through:** June 30, 1998

4. Rules were adopted revising **ch. Ins 17**, relating to annual patients compensation fund and mediation fund fees for the fiscal year beginning July 1, 1998, to limit fund fee refund requests to the current and immediate prior year only, and to establish standards for the application of the aggregate underlying liability limits upon the termination of a claims-made policy.

### Finding of Emergency

The commissioner of insurance (commissioner) finds that an emergency exists and that promulgation of this emergency rule is necessary for the preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The commissioner was unable to promulgate the permanent rule corresponding to this emergency rule, clearinghouse rule no. 98-48, in time for the patients compensation fund (fund) to bill health care providers in a timely manner for fees applicable to the fiscal year beginning July 1, 1998.

The commissioner expects that the permanent rule will be filed with the secretary of state in time to take effect September 1, 1998. Because the provisions of this rule first apply on July 1, 1998, it is necessary to promulgate the rule on an emergency basis. A hearing on the permanent rule, pursuant to published notice thereof, was held on May 8, 1998.

**Publication Date:** May 28, 1998  
**Effective Date:** June 1, 1998  
**Expiration Date:** October 29, 1998

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## EMERGENCY RULES NOW IN EFFECT (3)

### Natural Resources

(Fish, Game, etc., Chs. NR 1---)

1. A rule was adopted revising s. **NR 45.10 (3)** and **(4)**, relating to reservations on state parks, forests and other public lands and waters under the Department's jurisdiction.

### Exemption From Finding of Emergency

1997 Wis. Act 27, section 9137 (1) authorizes the department to promulgate these rules without a finding of emergency under s. 227.24, Stats.

Summary of Rules:

1. Creates a process for accepting telephone reservations for department camp sites.
2. Establishes time frame for making reservations.

**Publication Date:** December 15, 1997  
**Effective Date:** April 1, 1998  
**Expiration Date:** April 1, 1999  
**Hearing Date:** January 12, 1998

2. Rules adopted creating **ch. NR 47, subch. VII**, relating to the private forest landowner grant program.

### Exemption From Finding of Emergency

Under Section 9137 (10n) of 1997 Wis. Act 27, the Department is not required to make a finding of emergency for these rules.

**Publication Date:** February 20, 1998  
**Effective Date:** February 20, 1998  
**Expiration Date:** July 19, 1998  
**Hearing Date:** March 13, 1998

3. Rule was adopted amending s. **NR 20.037 (2)**, relating to readjustment of daily bag limits for walleye in response to tribal harvest.

### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and the foregoing rule is necessary for the immediate preservation of the public health, safety or welfare. A statement of facts constituting the emergency is:

The Chippewa bands set harvest goals for walleye on several waters each year prior to the spring spearing season. The Department then reduces daily bag limits on individual waters for anglers in response to these harvest goals. Frequently, the Chippewa harvest goals are not met on many waters and notification that harvesting is complete is not given to the Department. The unused tribal harvest results in unnecessarily low walleye bag limits for anglers. On waters where Chippewa harvest goals are established but not met, the resulting reduced bag limits are not needed to protect walleye populations. Walleye bag limits lower than 3 per day result in reduced fishing opportunities and have led to tensions between anglers and the Chippewa tribes. The reduced daily bag limits also result in hardships on businesses dependent upon tourism and sportfishing in the ceded territory. The foregoing rule will allow the Department of Natural Resources to increase the walleye daily bag limits for anglers on waters where the Chippewa harvest goals are not met.

**Publication Date:** May 30, 1998  
**Effective Date:** May 30, 1998  
**Expiration Date:** October 27, 1998  
**Hearing Date:** July 16, 1998  
 [See Notice this Register]

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## EMERGENCY RULES NOW IN EFFECT

### Natural Resources

(Environmental Protection-General,  
Chs. NR 100--)

Rules adopted creating **ch. NR 166**, relating to the Safe Drinking Water Loan Program.

### Exemption From Finding of Emergency

Statutory authority: ss. 281.61 (2),(6), (12)(a)(b) and 227.24

Statute interpreted: s. 281.61

SECTION 1 creates ch. NR 166, Wis. Adm. Code, entitled "Safe Drinking Water Loan Program."

The federal Safe Drinking Water Act Amendments signed by President Clinton on August 6, 1996 created a new state revolving loan fund for drinking water infrastructure. The program creates a capitalization grant to states that enables states to provide loans to community water systems as well as nonprofit non-community water systems that build, upgrade, or replace water supply infrastructure to protect public health and address federal and state drinking water requirements.

The state budget bill, Wisconsin Act 27, s. 281.61, Stats., directs the Department of Natural Resources to promulgate rules establishing eligibility criteria, priority, and application procedures to administer the Safe Drinking Water Program, and to promulgate rules needed for the Department to exercise its responsibilities under the Safe Drinking Water Loan Program.

In order for the Department to meet deadlines for the capitalization grant, the rules providing eligibility criteria, priority, and application procedures must be in place by March 1, 1988. Accordingly, section 91 37(3x) of Act 27 authorizes the Department to promulgate emergency rules for the Safe Drinking Water Loan Program without providing proof that an emergency rule is needed to preserve public peace, health, safety, or welfare. The Department intends to promulgate ch. NR 166 as an emergency rule effective March 1, 1998 and to have the permanent rule in place by August 1, 1988.

The eligibility criteria and project priorities in ch. NR 166 reflect the overarching intention of s. 281.61 and the amendments to the federal Safe Drinking Water Act – to help fund projects that will facilitate compliance with national primary drinking water standards or otherwise significantly further the health protection objectives of the Safe Drinking Water Act.

The federal and state statutes also require that the rules that determine project ranking give priority, to the extent possible, to projects that address the most serious risks to human health (especially acute health risks related to microbial organisms), that are needed to ensure compliance with the Safe Drinking Water Act, and that assist communities that are most in need on a per household basis. Ch. NR 166 therefore assigns points to projects based on criteria that include: the severity of the human health risks that can be reduced or lessened by the project, the size and median household income of the population served by the water system, secondary contaminant violations or system compliance addressed by the project, and the technical, financial, and managerial capacity of the water system. Ch. NR 166 also establishes interest rates based on financial eligibility criteria that reflect the priorities in s. 281.61 and the Safe Drinking Water Act.

Ch. NR 166 establishes the types of financial assistance available as authorized by s. 281.61, Stats., establishes eligibility criteria for types of projects and costs, and excludes types of projects listed as ineligible in s. 281.61 and the Safe Drinking Water Act.

Ch. NR 166 details the procedures and requirements to apply for assistance, the conditions that will apply to assistance agreements, the options available to the Department in the event of noncompliance, and the review of Department decisions available to applicants.

**Publication Date:** March 18, 1998  
**Effective Date:** March 18, 1998  
**Expiration Date:** August 15, 1998  
**Hearing Dates:** March 13 and 16, 1998

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## EMERGENCY RULES NOW IN EFFECT

### Natural Resources

(Environmental Protection-Water Regulation,  
Chs. NR 300--)

Rules adopted revising **ch. NR 300**, relating to fees for waterway and wetland permit decisions.

### Finding of Emergency

The Department of Natural Resources finds that an emergency exists and rules are necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

Land development and public infrastructure projects that affect water resources are being delayed as a result of extreme workload and high staff vacancy rate in southeastern Wisconsin and elsewhere. Fee revenue must be generated immediately in order to support positions authorized in the recent budget to address the delays.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on March 25, 1998.



The rules contained herein shall take effect on April 1, 1998, following publication in the official state newspaper pursuant to authority granted by s. 227.24(1)(c), Stats.

**Publication Date:** April 1, 1998  
**Effective Date:** April 1, 1998  
**Expiration Date:** August 29, 1998  
**Hearing Dates:** May 27 and 28, 1998

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## EMERGENCY RULES NOW IN EFFECT

### *Natural Resources*

#### **(Environmental Protection—Air Pollution Control, Chs. NR 400—)**

Rules adopted revising s. NR 485.04, relating to emission limitations for motor vehicles.

### **Finding of Emergency**

The Department of Natural Resources finds that an emergency exists and that the rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Many 1980 to 1986 model year vehicles cannot reasonably maintain a level of emissions that would comply with the emission limitations scheduled to go into effect on December 1, 1997, under the current rule. In addition, the number of 1990 and older model year vehicles that would need to be repaired in order to comply with these limitations may exceed the number of vehicles the repair industry could effectively repair. Finally, after December 1, 1997, no fast-pass emission limitations will apply to some 1994 and newer model year vehicles. (Fast-pass limitations enable very clean vehicles to pass the I/M program's emission test in less time than the typical test.) Preservation of the public welfare necessitates the adoption of an emergency rule since: (1) the repairs that would need to be done on some 1990 and older model year vehicles attempting to comply with the emission limitations scheduled to go into effect on December 1, 1997, are likely to be costly and ineffective in keeping emissions low, and (2) the absence of fast-pass emission limitations for some newer vehicles would unnecessarily increase the time motorists would need to wait in line at the I/M test stations prior to having their vehicles tested.

**Publication Date:** December 29, 1997  
**Effective Date:** January 1, 1998  
**Expiration Date:** May 31, 1998  
**Hearing Date:** January 14, 1998  
**Extension Through:** July 29, 1998

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## EMERGENCY RULES NOW IN EFFECT (2)

### *Public Instruction*

1. Rules adopted creating ch. PI 36, relating to full-time open enrollment.

### **Finding of Emergency**

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

1997 Wis. Act 27 created an inter-district public school open enrollment program in Wisconsin, beginning in the 1998–99 school year. Pupils in kindergarten to grade 12 may attend public school in a district other than the one in which they reside, if space is available (and subject to certain other limitations). A child may attend a prekindergarten or early childhood program in a nonresident school district if the resident district also offers the program and if the child is eligible for the program in the resident district.

The department is responsible for administering the program, including creating uniform application forms, administering school finance provisions, administering a transportation reimbursement program for low-income parents and collecting data and making reports to the legislature, deciding appeals and conducting outreach to inform parents about the program. Administrative rules are necessary to ensure uniform procedures throughout the state.

Parents must apply to the nonresident school district no earlier than February 2 and no later than February 20, 1998, for attendance in the 1998–99 school year. Therefore, the department is promulgating these emergency rules in order to notify pupils, parents, and school districts of the necessary timelines and requirements to participate in the program in time for the upcoming school year.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

**Publication Date:** January 17, 1998  
**Effective Date:** January 17, 1998  
**Expiration Date:** June 16, 1998  
**Hearing Dates:** February 17, 18 and 19, 1998  
**Extension Through:** August 14, 1998

2. Rules adopted revising ch. PI 40, relating to the youth options program.

### **Finding of Emergency**

The Department of Public Instruction finds an emergency exists and that a rule is necessary for the immediate preservation of the public welfare. A statement of the facts constituting the emergency is:

Effective the 1998–99 school year, 1997 Wis. Act 27 renames the postsecondary enrollment options (PSEO) program to be the youth options program. For institutions of higher education (IHEs), the youth options program will operate essentially the same as it did under the PSEO program. However, the program makes several changes to the program as it relates to technical colleges and pupils attending technical colleges as described in the analysis.

The emergency rules make several modifications to ch. PI 40 in order to clarify certain provisions and to comply with statutory language changes made as a result of the Act.

By January 30, school districts must notify pupils of program changes effective in the 1998–99 school year; by March 1, pupils must notify school districts of their intent to participate in the program. Therefore, the department is promulgating these emergency rules in order to notify pupils, school districts, IHEs and technical colleges of the necessary timelines and requirements to participate in the revised youth options program in time for the upcoming school year.

The rules contained in this order shall take effect upon publication as emergency rules pursuant to the authority granted by s. 227.24, Stats.

**Publication Date:** January 16, 1998  
**Effective Date:** January 16, 1998  
**Expiration Date:** June 15, 1998  
**Hearing Dates:** February 17, 18 and 19, 1998  
**Extension Through:** August 14, 1998

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## EMERGENCY RULES NOW IN EFFECT

### *Public Service Commission*

Rules adopted amending ss. **PSC 160.05, 160.11 (6) and 160.17**, relating to the provision of universal telecommunications service and administration of the universal service fund and creating **ch. PSC 161**, establishing the Education Telecommunication Access Program.

### ANALYSIS PREPARED BY THE PUBLIC SERVICE COMMISSION OF WISCONSIN

The Technology for Educational Achievement in Wisconsin (TEACH) initiative culminated in comprehensive legislation in 1997 Wis. Act 27 (Act 27). Newly enacted s. 196.2 18(4r)(b), Stats., mandates that the Public Service Commission (Commission), in consultation with the Department of Administration (Department) and Technology for Educational Achievement (TEACH) in Wisconsin Board (Board), promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program. Section 9141 of Act 27 mandates that the Commission promulgate emergency rules establishing the Educational Telecommunications Access Program, to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links, for the period before the effective date of permanent rules promulgated under s. 196.218(4r)(b), Stats., but not to exceed the period authorized under s. 227.24(1)(c) and (2), Stats.

These emergency rules establish the Educational Telecommunications Access Program to provide access to data lines and video links for eligible school districts, private schools, technical college districts, private colleges and public library boards at low monthly prices. These rules implement the TEACH legislation by:

- ♦ Defining the entities which may be eligible under this program, i.e., “private college,” “private school,” “public library board,” “school district” and “technical college district.”
- ♦ Defining a “data line” as a data circuit which provides direct access to the internet.
- ♦ Defining a “video link” as a 2-way interactive video circuit and associated services.
- ♦ Establishing technical specifications for a data line, including that such a line shall terminate at an internet service provider, unless the Board determines that an alternative is acceptable.
- ♦ Establishing technical specifications for a video link which exclude television monitors, video cameras, audio equipment, any other classroom equipment or personnel costs associated with scheduling.
- ♦ Including privacy protections as required by s. 196.218 (4r)(c)5., Stats.
- ♦ Providing an application procedure which (1) allows a school district that operates more than one high school to apply for access to a data line and video link or access to more than one data line or video link, but not to more than the number of high schools in that district, (2) prohibits a school district from applying if it has received an annual grant from the Board in the current state fiscal year under an existing contract with the Department, (3) prohibits a technical college district from applying before April 1, 1998. and (4) prohibits a school district, private school, technical college district, private college or public library board from applying if it is receiving partial support funding through rate discounts under s. PSC 160.11.
- ♦ Requiring that the Board determine eligibility by applying criteria, including availability of funds and impact of the requested access on available funds, reasonableness of the requested access,

readiness of the applicant to utilize the requested access and proposed uses of the requested access.

- ♦ Requiring the Board to determine by April 1, 1998, whether there are sufficient monies in the appropriation to include technical college districts in the program on or after that date.

- ♦ Establishing criteria for the Board to consider in prioritizing applications if monies in the universal service fund are insufficient to approve all pending applications.

- ♦ Providing for “alternative access,” defined as a service architecture or technology not available through the Department at the time of the application.

- ♦ Requiring monthly payments from the applicant to the Department for each data line or video link, not to exceed \$250 per month, except that the payment may not exceed \$100 per month for each line or link which relies upon a transport medium operating at a speed of 1.544 megabits per second.

- ♦ Providing that assessments for this program shall be made by the Commission under ch. PSC 160.

### Exemption From Finding of Emergency

In Section 9141 of 1997 Wis. Act 27, the legislature specifically exempted the Commission from the finding of emergency required by ss. 227.24, Stats.

<b>Publication Date:</b>	<b>February 27, 1998</b>
<b>Effective Date:</b>	<b>February 27, 1998</b>
<b>Expiration Date:</b>	<b>July 26, 1998</b>
<b>Hearing Date:</b>	<b>May 5, 1998</b>

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## EMERGENCY RULES NOW IN EFFECT

### *Technical College System Board*

Rules adopted creating **ch. TCS 15**, relating to Faculty Development Grants.

### Finding of Emergency

The Wisconsin Technical College System Board finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of facts constituting the emergency is:

1997 Wis. Act 27 (the 1997–99 biennial budget bill) took effect on October 14, 1997, which was three and a half months into fiscal year 1997–98. That act created ss. 20.292(1)(eg) and 38.33, Stats. An annual appropriation of \$832,000 in each of the state fiscal years of the 1997–99 biennium was established. These funds are to be awarded by the technical college system board as grants to technical college district boards to establish faculty development programs.

The Act requires the technical college system board to promulgate rules establishing specific criteria for awarding these grants. The technical college system board has just begun the permanent rule making process for establishing administrative rules for the faculty development grants program. However, there is insufficient time to have the permanent rules in place before the local technical college districts must submit their proposals for faculty development grants under s. 38.33, Stats. It is imperative that the program be implemented and the funds be distributed before the end of the fiscal year or else the appropriated funds will lapse to the general fund. The loss of funds, including local matching funds, will have a detrimental effect on the ability of district boards to establish faculty development programs.

<b>Publication Date:</b>	<b>April 1, 1998</b>
<b>Effective Date:</b>	<b>April 1, 1998</b>
<b>Expiration Date:</b>	<b>August 29, 1998</b>
<b>Hearing Date:</b>	<b>June 30, 1998</b>

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## EMERGENCY RULES NOW IN EFFECT

### Workforce Development

#### (Economic Support, Chs. DWD 11 to 59)

Rules were adopted revising **s. DWD 12.25**, relating to amendments to the learnfare program.

#### Exemption From Finding of Emergency

The Department of Workforce Development promulgates a rule under the "emergency rule" procedure of s. 227.24, Stats., as authorized by section 9126 (5qh) of 1997 Wis. Act 27, which provides:

"Using the procedure under section 227.24 of the statutes, the department of workforce development may promulgate rules required under section 49.26 of the statutes, as affected by this act, for the period before the effective date of the permanent rules promulgated under section 49.26 of the statutes, as affected by this act, but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the department of workforce development need not provide evidence of the necessity of preservation of the public peace, health, safety or welfare in promulgating rules under this subsection."

#### Analysis

Statutory authority for rule: s. 49.26 (1) (gm) 2 and (h) 1

Statute interpreted by the rule: s. 49.26

This rule implements changes to the learnfare program made by 1997 Wis. Act 27 by amending the existing rules on the learnfare program, s. DWD 12.25, Wis. Adm. Code, as follows:

Application of the school attendance requirement is changed from children aged 6 to 19 to children aged 6 to 17.

A child will not meet the learnfare attendance requirement if the child is not enrolled in school or was not enrolled in the immediately preceding semester.

Participation in case management is required for a child who does not meet the attendance requirements or who is a minor parent, a dropout, a returning dropout, or a habitual truant. If a child fails to meet the attendance requirements, or if the child and the child's parent fail to attend or reschedule a case management appointment or activity after two written advance notices have been given by the W-2 agency, the W-2 agency is required to impose a financial penalty unless an exemption reason or a good cause reason is verified.

The exemption reasons are the same criteria that have in the past been treated as good cause under learnfare. In addition, good cause for failing to participate in learnfare case management includes any of the following:

- Child care is needed and not available.
- Transportation to and from child care is needed and not available on either a public or private basis.
- There is a court-ordered appearance or temporary incarceration.
- Observance of a religious holiday.
- Death of a relative.
- Family emergency.
- Illness, injury or incapacity of the child or a family member living with the child.
- Medical or dental appointment for the minor parent or the minor parent's child.

- Breakdown in transportation.
- A review or fair hearing decision identifies good cause circumstances.
- Other circumstances beyond the control of the child or the child's parent, as determined by the W-2 agency.

The financial penalty will be imposed as a reduction of the benefit amount paid to a W-2 participant who is in a community service job (CSJ) or transitional placement and will be imposed as a liability against a W-2 participant who is in a trial job. The amount of the penalty will be \$50 per month per child, not to exceed \$150 per W-2 group per month. The financial penalty will be imposed each month until the child meets the school attendance or case management requirements or until exemption or good cause reason is verified.

**Publication Date:** January 2, 1998

**Effective Date:** January 2, 1998

**Expiration Date:** June 1, 1998

**Hearing Date:** March 16, 1998

**Extension Through:** July 30, 1998

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## EMERGENCY RULES NOW IN EFFECT

### Workforce Development

#### (Wage Rates, chs. DWD 290-294)

Rule adopted revising **ch. DWD 290**, relating to prevailing wage rates for state or local public works projects.

#### Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that a rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

As explained in more detail in the analysis below, the Department of Workforce Development, acting under its statutory authority to adjust threshold limits in accordance with changes in construction costs, has determined that the increase in construction costs between April 1996 and November 1997 requires that the threshold limits for prevailing wage rate determinations be raised from \$30,000 to \$32,000 for single-trade projects and from \$150,000 to \$160,000 for multi-trade projects.

If these new threshold limits are not put into effect by an emergency rule, the old limits will remain in effect for approximately six months, until the conclusion of the regular rulemaking process. The practical effect of this would be that, between now and 7/1/98, a single-trade project costing more than \$30,000 but less than \$32,000, or a multi-trade project costing more than \$150,000 but less than \$160,000, would not be exempt from the requirement to get a prevailing wage rate determination. A local unit of government or state agency proceeding with a public works project in this cost range during this period would incur the added cost and difficulty of complying with the state prevailing wage laws, despite the fact that the threshold limit adjustment is based on national construction cost statistics and is very unlikely to be changed by the regular rulemaking process. The Department is proceeding with this emergency rule to avoid imposing this potential added cost on local governments and state agencies.

**Publication Date:** February 13, 1998

**Effective Date:** February 13, 1998

**Expiration Date:** July 12, 1998

**Hearing Date:** March 27, 1998

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## STATEMENTS OF SCOPE OF PROPOSED RULES

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### ***Financial Institutions***

#### ***Division of Savings Institutions***

##### **Subject:**

DFI-SB and DFI-SL Code – Relating to codifying a policy authorizing savings banks and savings and loan associations to invest in subsidiary limited liability companies.

##### **Description of policy issues:**

###### *Description of the objective of the rule:*

This rule would codify a policy of the Division of Savings Institutions (“Division”) in the Department of Financial Institutions and authorize savings banks and savings and loan associations (“savings institutions”) to invest in subsidiary limited liability companies.

###### *Description of existing policies relevant to the rule and of new policies proposed to be included, or an analysis of policy alternatives:*

By current statute, savings institutions may invest in the stock of subsidiary service corporations which are formed for specific purposes.

Longstanding administrative rules have permitted savings institutions to also invest in subsidiary partnerships and joint ventures.

Chapters 214 and 215, Stats., mention subsidiary “corporations”; however, since 1989 for savings and loan associations and 1994 for savings banks, the administrative rules have allowed investments in subsidiary partnerships and joint ventures. Longstanding administrative rules have considered these 2 types of legal entities as the functional equivalent of corporations. The more recently created limited liability company has been similarly interpreted. This rule now codifies the interpretation by expanding the types of subsidiary business entities that savings institutions may form and invest in to limited liability companies.

##### **Statutory authority for the rule:**

Sections 214.715 (1) (a) and 215.02 (7) (a), Stats.

##### **Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

About 40 hours of state employees’ time will be required, from drafting the rule to complying with all rule-making requirements to final rule adoption.

### ***Natural Resources***

##### **Subject:**

NR Code – Relating to:

- 1) Creating rules modifying the lighting requirements for boats to keep the requirements in conformity with the lighting rules adopted by the U.S. Coast Guard;
- 2) Creating standard noise measurement procedures for boat motors;
- 3) Creating fees for boating safety courses;
- 4) Defining “operated” for dealer law; and
- 5) Taking comments on s. NR 5.15 size requirements for boating ordinance posting.

##### **Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

Currently, the State lighting requirements for boats do not conform to the federal standards, due to changes by the federal government. The Department is required to create this rule for uniformity, pursuant to s. 30.61 (9), Stats. The motorboat engine noise testing has no set procedures. The Department is required to set fees for boating safety classes, and the Department needs to clarify, under the new dealer statute, “operate”. The Department has also been asked to look at the size requirements for signs, pursuant to s. NR 5.15.

This action does not represent a change from past policy.

###### *Explain the facts that necessitate the proposed change:*

Federal and state law require that state boat light laws be uniform and current standards could cause confusion and accidents by boaters. The legislature passed new statutory changes which require administrative rules, and there have been legislative requests to look at s. NR 5.15 size requirements.

##### **Statutory authority:**

Section 30.61 (9), Stats.

##### **Anticipated time commitment:**

The anticipated time commitment is 40 hours. Six public hearings are proposed to be held in Waukesha, Madison, La Crosse, Green Bay, Eau Claire and Woodruff.

### ***Natural Resources***

##### **Subject:**

NR Code – Relating to addition of capacity development requirements for public water systems in ch. NR 809.

##### **Description of policy issues:**

*Description of policy issues to be resolved, include groups likely to be impacted or interested in the issue:*

Nationally EPA has determined that many of the violations of the Safe Drinking Water Act occur because water systems lack the capacity to adequately develop, finance and operate a public water system. Therefore, as part of the 1996 Amendments to the Safe Drinking Water Act, states were required to implement a Capacity Development program or forfeit a portion of the State Revolving Loan Fund (SRLF) capitalization grant.

The Capacity Development program must contain two components:

- ◆ A component that reviews the system capacity for all new non-transient non-community and community water systems; and
- ◆ A component that reviews the system capacity of all existing public water systems.

Should the state not develop and implement a complete capacity development program, it would forfeit 20% of the SRLF capitalization grant.

The proposed rule modifications would allow the state to implement a program for review of new water system capacity at non-transient non-community and community water systems. It would impact new water systems for schools, mobile home parks, municipal water systems, subdivisions, and businesses with 25 or more employees on-site. The rule may also include requirements for system capacity at existing public water systems if deemed necessary during program development.

This action does not represent a change from past policy.

###### *Explain the facts that necessitate the proposed change:*

Requirement of 1996 Amendments to the Federal Safe Drinking Water Act.

**Statutory authority:**

Ch. 280 and s. 281.12, Stats.

**Anticipated time commitment:**

The anticipated time commitment is 169 hours. Two public hearings are proposed to be held in November, 1998 at Stevens Point and Madison.

***Pharmacy Examining Board*****Subject:**

Phar Code – Relating to establishing requirements and procedures for the administration of a drug product or device by a pharmacist.

**Description of policy issues:***Objective of the rule:*

To fulfill the mandate of 1997 Wis. Act 68 (the “Act”), which requires the Board to promulgate administrative rules establishing the requirements and procedures for administering drug products or devices to patients by pharmacists. Under newly-created s. 450.035 (1r), Stats., a pharmacist who, among other things, complies with the rules to be developed, may administer a prescription drug product or device to patients in the course of the pharmacist’s teaching self-administration techniques to the patient.

To assist in promulgating the rules, the Act creates a “pharmacist advisory council,” consisting of two pharmacists, one physician and one nurse. [S. 15.407 (6), Stats.] The Board may only promulgate, amend or repeal rules respecting the requirements for pharmacists in administering drug products or devices, pursuant to the unanimous recommendation of and in the identical form recommended by the pharmacist advisory council. [SS. 450.02 (2g) (b) and 450.025, Stats.]

*Policy analysis:*

The Pharmacy Examining Board is required to promulgate rules respecting the requirements and procedures to be followed by pharmacists in administering drugs and devices to patients. In adopting these rules, the Board is required to follow the recommendations made by a pharmacist advisory council that includes members from both the medical and nursing professions, as well as two pharmacists. This format should help assure that the requirements and procedures pharmacists must follow in administering drugs or devices to patients are developed and applied in a manner consistent with those historically followed by the medical and nursing professions.

**Statutory authority:**

SS. 15.08 (5) (b) and 227.11 (2), Stats., and s. 450.01 (2g) (b), Stats., as created by 1997 Wis. Act 68.

**Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

20 hours.

***Pharmacy Examining Board*****Subject:**

Phar Code – Relating to establishing the criteria for approving providers of courses relating to a pharmacist’s administration of prescribed drug products and devices, and vaccines, as well as the continuing education coursework required for the biennial renewal of a pharmacist’s license.

**Description of policy issues:***Objective of the rule:*

To fulfill the mandate of 1997 Wis. Act 68, which requires the Board to promulgate administrative rules establishing criteria for approving courses under newly-created ss. 450.035 (1r) and (2) and 450.085 (1), Stats.

Respectively:

- ✧ Section 450.035 (1r), Stats., permits a pharmacist to administer by injection a prescribed drug product or device if, among other things, he or she “has successfully completed a course of study and training in injection technique conducted by a course provider approved by the American Council on Pharmaceutical Education or the board.”
- ✧ Section 450.035 (2), Stats., permits a pharmacist to administer a vaccine if, among other things, he or she “has successfully completed 12 hours in a course of study and training, approved by the American Council on Pharmaceutical Education or the board, in vaccination storage, protocols, injection technique, emergency procedures and recordkeeping....”
- ✧ Section 450.085 (1), Stats., permits a pharmacist to renew his or her biennial license if, among other things, he or she submits proof of completing “within the 2-year period immediately preceding the date of his or her application, 30 hours of continuing education in courses conducted by a provider that is approved by the American Council on Pharmaceutical Education or in courses approved by the board.”

*Policy analysis:*

Under newly-enacted s. 450.02 (2g) (a), Stats., the Pharmacy Examining Board is required to promulgate rules “after consultation with the Medical Examining Board and the Board of Nursing” establishing the criteria for approving courses required of pharmacists who desire to administer prescription drugs or devices, or vaccines, to patients, as well as those necessary for renewal of a pharmacist’s license for the biennium beginning on June 1, 2000.

There are at least two primary approaches that could be taken in developing the course criteria under each of the three new subsections created. First, and simplest, the Board order could adopt a rule essentially stating that pharmacists need only obtain education from providers approved by the American Council on Pharmaceutical Education. Under this approach, the Board would simply accept those providers approved by the American Council on Pharmaceutical Education and would not need to independently develop an approval process for additional course providers.

The second approach, which is actually complementary to the first, would be for the Board to independently approve providers and courses in each area in addition to those already approved by the American Council on Pharmaceutical Education. If there are such additional courses appropriate to pharmacy practice, the required consultation with the Medical and Nursing Boards may identify them for approval under the rules.

**Statutory authority:**

Sections 15.08 (5) (b) and 227.11 (2), Stats., and 450.01 (2g) (a), Stats., as created by 1997 Wis. Act 68.

**Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

10 hours.

***Public Service Commission*****Subject:**

PSC Code – Relating to rules to establish an educational telecommunications access program (per TEACH WI).

**\*\*Note:** This scope statement was inadvertently left out of the March 15, 1998 *Wis. Adm. Register*.

**Description of policy issues:***Objective of rule:*

The TEACH initiative culminated in comprehensive legislation in 1997 Wis. Act 27 (Act 27). Newly-enacted s. 196.218 (4r) (b), Stats., mandates that the Commission, in consultation with the Department of Administration and the Technology for Educational Achievement in Wisconsin Board, promulgate rules—under the usual ch. 227, Stats., rulemaking procedures—establishing the Educational Telecommunications Access Program.

Section 9141 of 1997 Wis. Act 27 mandates that the Commission promulgate emergency rules establishing the Educational Telecommunications Access Program, to provide school districts, private schools, technical college districts, private colleges and public library boards with access to data lines and video links, for the period before the effective date of permanent rules promulgated under s. 196.218 (4r) (b), Stats., but not to exceed the period authorized under s. 227.24 (1) (c) and (2), Stats. The Commission has adopted such emergency rules, at its open meeting on this date, which will take effect upon publication.

This scoping statement addresses the promulgation of permanent rules to establish this program as required by law.

*Existing policies relevant to rule:*

The legislature established the broad framework for the Educational Telecommunications Access Program in 1997 Wis. Act 27. The emergency rules include all of the statutory requirements. As directed, those rules also establish eligibility requirements and technical specifications. The Commission expects the first draft of the permanent rules to include all of the same requirements and specifications.

Many of the Commission's public policy considerations, stated in s. 196.03 (6), Stats., are embodied in the emergency rules:

○ Promotion of universal service.

The Educational Telecommunications Access Program is partially funded through the Universal Service Fund. The Commission was directed to promulgate rules establishing that fund in 1993 Wis. Act 496, and originally monies in the fund could only be used for the purposes specified in s. 196.218 (5) (a) 1. through 4., Stats. The TEACH initiative, in 1997 Wis. Act 27 and 1997 Wis. Act 41, has added three additional purposes, s. 196.218 (5) (a) 5. through 7., Stats.

○ Promotion and preservation of competition; promotion of consumer choice.

While the TEACH legislation is technology-neutral and competitor-neutral, the statutes also require that the supported services be under contract with the Department of Administration. Not all competitors have service currently under contract with the Department. The emergency rules establish a procedure for requests for "alternative access", which is defined as "a service architecture or technology not available through the Department at the time of the application."

○ Promotion of economic development; promotion of efficiency and productivity; promotion of services in geographical areas with diverse income.

The intent of the program itself, as envisioned by the legislature, is to deploy technologically-advanced infrastructure to the eligible entities to improve library and educational service throughout the state. One of the major factors for the Technology for Educational Achievement in Wisconsin Board to use in its determination of eligibility under the emergency rule is the reasonableness, including economic efficiency and cost, of the requested access. Other factors include:

- ✓ Applicant's technology plan;
- ✓ Readiness of applicant to utilize the requested access; and
- ✓ Proposed uses of the requested access.

In addition, if monies in the universal service fund are insufficient to approve all pending applications, the Board may prioritize applications by considering additional criteria, such as maximization of the number of eligible applicants statewide, and geographic distribution of access statewide.

*New policies proposed:*

Unknown at this time. Of course, the permanent rule-making process will allow for drafts and comments from beneficiaries of the Educational Telecommunications Access Program, telecommunications providers and other interested persons. The Commission itself will have three drafts of the rule on the agendas for three open meetings. Legislative review of drafts will occur at various stages. Under authority of the emergency rule, the Department of Administration will be gaining experience in the application of the contracting procedures within this context. The Technology for Educational Achievement in Wisconsin Board will also gain knowledge of how the application process is working and the extent to which the program meets library and education needs.

Within the statutory framework of the TEACH program, the three agencies cooperating in this rulemaking—the Commission, the Department of Administration and the Technology for Educational Achievement in Wisconsin Board—might propose new policies as a result of all of these activities.

*Analysis of alternatives:*

The statutes are explicit as to what the rules must include. The emergency rules that will be used to start this permanent rule process include those mandated items. As the rulemaking proceeds, the Commission will evaluate suggested changes and modifications as brought forth in the process.

**Statutory authority:**

Sections 196.02 (1) and (3), 196.218 (4r) (b) and 227.11 (2), Stats.

**Time estimates for rule development and other resources necessary to develop rule:**

Extensive work has been completed on the emergency rules. The Commission will be working to have permanent rules in place before the emergency rules expire. Although the work done to promulgate the emergency rules will provide a valuable base for work on permanent rules, the Commission expects at least 200 staff hours will be needed to complete this task. Section 196.218 (4r) (b), Stats., requires that three agencies cooperate in this rulemaking. Staff resources from those agencies will be required. If you have specific questions or comments regarding this proposed rulemaking, please contact Gary A. Evenson, Assistant Administrator, Telecommunications Division, at (608) 266-6744.

## *Public Service Commission*

**Subject:**

PSC Code – Relating to the regulation of water and sewer service in mobile home parks.

**Description of policy issues:**

*Objective of the rules:*

On April 30, 1998, the Governor signed 1997 Wis. Act 229. This new law transferred regulation of water and sewer service in mobile home parks to the Commission. Section 15 of the law created s. 196.498, Stats., which reads:

**196.498 Regulation of water and sewer service to mobile home parks.**

- (2) RULES. The commission shall promulgate rules that establish standards for providing water or sewer service by a mobile home park occupant, including requirements for metering, billing, deposits, deferred payment arrangements, installation of service, refusing or discontinuing service and resolving disputes with respect to service. Rules promulgated under this subsection shall ensure that any charge for water or sewer service is reasonably adequate and that any practice relating to providing the service is just and reasonable.

The Commission has not yet drafted the rules directed by s. 196.498 (2), Stats.; however, the scope of these proposed rules will include the subjects included in the statute, as well as consumer protection and water/sewer rates and practices.

*Existing policies relevant to the proposed rules:*

Administrative rules for water and sewer utilities concerning the areas of metering, billing, deposits, deferred payment agreements, installation of service, refusal or discontinuation of service, and dispute resolution are presently contained in ch. PSC 185, Wis. Adm. Code. Many of these rules will also be applicable to the regulation of water and sewer service by mobile home park owners and will serve as a guide for development of the proposed rules.

*New policies proposed:*

While the rules in ch. PSC 185, Wis. Adm. Code, may be appropriate for water and sewer utilities in the areas of metering, billing, deposits, deferred payment agreements, installation of service, refusal or discontinuation of service, and dispute resolution, some of them may require modification, or supplementation in order to fit the unique situation of a mobile home park.

*Analysis of alternatives:*

No rules have been drafted at this point, but when preliminary rules are drafted, the Commission will solicit comments and alternatives from both consumer groups and mobile home park owners.

**Statutory authority:**

The rules being proposed are mandated by section 15, 1997 Wis. Act 229.

**Time estimates for rule development, and other resources necessary to develop rule:**

Completing the rulemaking process should take approximately 300 staff hours. No additional staff or other agency resources are anticipated for this rulemaking. If you have specific questions or comments regarding this proposed rulemaking, please contact Mr. Jeff Kitsemel at (608) 266-5739.

***Public Service Commission*****Subject:**

Ch. PSC 100 – Relating to rules that establish requirements and procedures applicable to an affiliated interest applying for approval to own, control or operate a wholesale merchant plant.

**Description of policy issues:**

*A description of the objective and policy issues to be resolved, including groups likely to be impacted or interested in the issues:*

1997 Wis. Act 204 created s. 196.491 (3m), Stats., which requires the Public Service Commission to promulgate administrative rules that establish requirements and procedures to be applied to the ownership, control or operation of a wholesale merchant plant.

The new law was created in part to enhance reliability in the generating and transmission of electric power to Wisconsin citizens. As part of the process a mechanism was created to allow for the development of wholesale merchant plants. Act 204 requires that proposed rules be promulgated and submitted for review to the legislature by November 1, 1998.

The rules are to:

- 1) Describe the showing that an applicant is required to make for the Commission to grant approval to own, control or operate a wholesale merchant plant;
- 2) Establish screening tests and safe harbors for proposed wholesale merchant plant projects, including projects in which an affiliated interest is a passive investor and over which the affiliated interest is not able to exercise control or influence and projects in which the affiliated interest's ownership interest is less than 5 percent;
- 3) Describe the Commission's analytical process in making its determination and the factors it uses in making its finding;
- 4) Allow an interested person to request a hearing on an application under s. 227.42, Stats.

**Statutory authority:**

Sections 196.02 (3), 196.491 (3m), and 227.11 (2), Stats.

**Estimate of time and resources needed to develop the rules:**

The Commission estimates that approximately 500 hours of employee time will be required to develop the proposed rules.

***Public Service Commission*****Subject:**

Chapter PSC 117 - Relating to the creation of rules establishing requirements and procedures for the Commission in setting rates for retail electric service, to reflect the assignment of costs and the treatment of revenues from sales to customers outside this state that the public utility does not have a duty to serve.

**Description of policy issues:***Description of objective:*

1997 Wis. Act 204 was passed in part to enhance the reliability in the generating and transmission of electric power to Wisconsin customers. As part of that process, s. 196.03 (5m), Stats., was created to ensure that rates to in-state retail customers reflect a proper assignment of costs to out-of-state sales of electricity by public utilities located within the state.

1997 Wis. Act 204 created s. 196.03 (5m), Stats., that requires the Commission to promulgate rules establishing requirements and procedures for the Commission to reflect the assignment of costs and the treatment of revenues from sales by a public utility to customers outside the state that the public utility does not have a duty to serve in setting rates for retail electric service.

*Description of policy issues:*

In the past, the Commission has addressed the issue of assignment of costs and treatment of revenues in individual rate cases, based on the relevant facts ascertained from the hearings process for those rate cases. The Commission's authority in setting retail electric rates is established in various sections of ch. 196, Stats., including ss. 196.03, 196.20, 196.22, and 196.37, Stats. The Commission does not have any formal internal policies which address the assignment of costs and treatment of revenues from sales by a public utility to customers outside the state (that the public utility does not have a duty to serve) in setting rates for retail electric service to customers in the state.

The rules are expected to:

- 1) Establish formal methods for allocating costs to sales by a public utility to a customer outside the state in setting retail electric rates;
- 2) Establish formal methods of reflecting revenues from sales by a public utility to a customer outside the state in setting retail electric rates; and
- 3) Ensure that a public utility within the state does not provide electric power to customers outside the state at discriminatory or preferential prices below the prices which the public utility charges its in-state retail electric customers.

*Groups likely to be impacted:*

The creation of ch. PSC 117, Wis. Adm. Code would directly impact Wisconsin's electric public utilities. In addition, the creation of ch. PSC 117, Wis. Adm. Code, would indirectly impact the customers of Wisconsin's electric public utilities, owners of "wholesale merchant plants," and electric cooperative associations organized under ch. 185, Stats.

**Statutory authority:**

Sections 196.03 (5m) and 227.11, Stats.

**Estimate of time and resources needed to develop the rules:**

The Commission estimates that approximately 500 hours of employee time will be required to develop the proposed rules.

***Regulation and Licensing*****Subject:**

RL Code – Relating to:

- Establishing requirements and standards for the practice of massage therapy or bodywork;

- Establishing registration requirements;
- Establishing education, training or competency requirements;
- Establishing examination requirements;
- Establishing renewal requirements; and
- Establishing continuing education requirements.

**Description of policy issues:**

*Objective of the rule:*

To fulfill the mandate of 1997 Wis. Act 156, which requires the Department to promulgate administrative rules establishing requirements and standards for the practice of massage therapy or bodywork by a registrant, including a code of ethics that governs a registrant's practice of massage therapy or bodywork. Establishing education, training or competency requirements that an applicant for a license must satisfy in order to be issued a license of registration. The rules shall require an applicant to complete at least 500 classroom hours of study in a course of instruction at a school of massage therapy or bodywork approved under s. 39.51, Stats., and the rules may require an applicant to pass an examination, administered or approved by the Department, to determine fitness to practice massage therapy or bodywork. Establishing continuing education requirements that a person must satisfy to be eligible to renew a license of registration.

*Policy analysis:*

Under newly-created s. 440.972, Stats., the Department of Regulation and Licensing is required to promulgate rules establishing criteria.

**Statutory authority:**

S. 227.11 (2), Stats., and s. 440.972, Stats., as created by 1997 Wis. Act 156.

**Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

20 hours.

## ***Regulation and Licensing***

**Subject:**

RL Code – Relating to regulation of home inspectors, which was created by 1997 Wis. Act 81. The Act became effective on April 28, 1998, but the regulation of home inspectors commences on November 1, 1998.

**Description of policy issues:**

*Objective of the rule:*

To fulfill the mandate of 1997 Wis. Act 81, which requires that the Department of Regulation and Licensing promulgate rules necessary to administer the new regulation of home inspectors, including rules to establish:

- ♡ Standards for acceptable examination performance;
- ♡ Standards for the practice of home inspection;
- ♡ Standards for specifying the mechanical and structural components and improvements to residential real property;
- ♡ Information that a home inspector is required to provide to a client concerning the results of a home inspection; and
- ♡ Continuing education requirements.

*Policy analysis:*

There are no existing policies that are relevant to the proposed rules, except that the Department and other credentialing authorities in the Department have rules relating to application requirements, examinations and continuing education. The proposed rules will be patterned after such rules.

The proposed rules will address issues such as the time and place for taking the examination, penalties for cheating on examinations and conditions under which an examination may be retaken after a candidate has failed the examination. The rules will provide procedures for approving continuing education programs and for providing evidence of having taken the required education. The rules will state the standards for conducting inspections and providing reports to consumers.

**Statutory authority:**

S. 227.11 (2), Stats., and s. 440.974, Stats., as created by 1997 Wis. Act 81. SECTION 3 of the Act permits the Department to promulgate the rules as emergency rules under s. 227.24, Stats.

**Estimate of the amount of state employee time and any other resources that will be necessary to develop the rule:**

15 hours.

## ***Transportation***

**Subject:**

Ch. Trans 101 – Relating to providing that “operating after revocation” and “operating after suspension” offenses be counted as three point offenses, effective **August 1, 1998**.

**Description of policy issues:**

*Description of the objective of the rule:*

Amend ch. Trans 101 to provide that Operating After Revocation and Operating After Suspension offenses be counted as three point offenses effective August 1, 1998.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Section 58 of 1997 Wis. Act 84 amends s. 343.32 (2) (bg), Stats., and provides that the Department shall assess three demerit points for operating a motor vehicle while disqualified, revoked, suspended or out-of-service, rather than six demerit points.

Section 85.15, Stats., as created by 1997 Wis. Act 84, permits the Department to implement the provisions of Act 84 as the Department's computer systems are able to put the provisions of the law into effect. By a notice in the *Wisconsin Administrative Register* dated July 1, 1998, the Secretary made Section 58 of the Act effective August 1, 1998. This rule-making brings ch. Trans 101 into conformity with s. 343.32 (2) (bg), Stats., as amended by 1997 Wis. Act 84.

**Statutory authority for the rule:**

S. 343.32 (2) (a), Stats.

**Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

5 hours.

## ***Transportation***

**Subject:**

Ch. Trans 157 – Relating to titling of vehicles held by trusts.

**Description of policy issues:**

*Description of the objective of the rule:*

This amendment to Ch. Trans 157, relating to titling of vehicles held by trusts, would eliminate the requirement that a trustee's signature on a trustee's affidavit to title a motor vehicle in the name of a trust (MV2790 form) be witnessed by a DOT employee, or notarized.



*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Applicants wishing to title a vehicle in the name of a trust must use the MV2790 form – Trustee's Affidavit for Certificate of Title. By rule, this form must be witnessed by a Department employee or notarized. The Division proposes to eliminate this requirement and accept the MV2790 form without a DOT employee witness or notarization. DMV expects this will save title and registration processing staff time, and help reduce the growing backlog of applications, as customers often mail their applications without notarization, requiring an additional customer contact and a delay in processing.

**Statutory authority for the rule:**

Chapter 227, Stats.

**Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

It is estimated that about 10 hours of staff time would be necessary to develop the rule.

***Transportation***

**Subject:**

Ch. Trans 320 – Relating to providing revenue from fees charged to event organizers and motor carrier companies for traffic enforcement and escort services provided by the State Patrol beyond the normal traffic enforcement and safety tasks.

**Description of policy issues:**

*Description of the objective of the rule:*

This rulemaking will create ch. Trans 320 which will provide revenue from fees charged to event organizers and motor carrier companies for traffic enforcement and escort services provided by the State Patrol beyond the normal traffic enforcement and safety tasks performed by State Patrol Troopers and Inspectors.

*Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives:*

Existing policies permit the State Patrol to charge escort fees for escort services provided to motor carriers that are overweight and oversize to ensure a safe transport on state roadways. This revenue is deposited in the Transportation Fund and does not provide direct revenue to the State Patrol to cover expenses, including overtime, for escort services. The mandate to deposit the escort services fees directly into the State Patrol appropriations account would permit the State Patrol to meet the costs associated with the services provided, including overtime expenses, while maintaining a full level of Trooper and Inspector strength on all of the State roadways.

Existing policies do not permit the State Patrol to charge private operators for the traffic enforcement and security services provided at special events throughout the State. The expenses related to additional officer salaries, overtime, and equipment used during the time of the event must be met through State Patrol general revenues. The mandate to deposit the event fees directly into the State Patrol appropriations account would permit the State Patrol to meet the costs associated with the enforcement and security services provided while maintaining a full level of Trooper and Inspector strength on all of the State roadways.

**Statutory authority for the rule:**

1997 Wis. Act 27 (budget bill) created s. 85.51, Stats., which permits the State Patrol to charge a fee for security and traffic enforcement services provided at any public event for which an admission fee is charged for spectators if the event is organized by a private organization. Act 27 also created ss. 25.40 (1) (a) 14. and 20.395 (5) (dg), Stats., which mandate that the fees for the events and for escort services be deposited in the general fund and credited to the appropriation account, and establishes that appropriation account in s. 20.395 (5) (dg), Stats.

**Estimates of the amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

DOT employees will require approximately 140 hours of time to develop the administrative rule, employing the expertise of planning analysts and budget analysts with assistance from representatives of the sworn personnel, and for review by DOT attorneys.

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## *SUBMITTAL OF RULES TO LEGISLATIVE COUNCIL CLEARINGHOUSE*

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### **Notice of Submittal of Proposed Rules to Wisconsin Legislative Council Rules Clearinghouse**

*Please check the Bulletin of Proceedings for further information on a particular rule.*

#### **Agriculture, Trade & Consumer Protection**

##### **Rule Submittal Date**

On June 3, 1998, the Wisconsin Department of Agriculture, Trade & Consumer Protection referred a proposed rule to the Wisconsin Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule amends ch. ATCP 48, Wis. Adm. Code, relating to the drainage districts.

##### **Agency Procedure for Promulgation**

Public hearings will be required, and will be held after the Wisconsin Legislative Council Rules Clearinghouse completes its review of the proposed rule. The Division of Agricultural Resource Management is primarily responsible for promulgation of this rule.

##### **Contact Person**

If you have questions regarding this rule, you may contact:

Ms. Mary Rose Teves  
Division of Agricultural Resource Management  
Telephone (608) 224-4604

or

Attorney Sherry Steffel  
Telephone (608) 224-5029

#### **Commerce**

##### **Rule Submittal Date**

On June 1, 1998, the Wisconsin Department of Commerce submitted a proposed rule to the Legislative Council Rules Clearinghouse.

##### **Analysis**

The proposed rule affects chs. Comm 83, 85 and 91, Wis. Adm. Code, relating to private onsite wastewater treatment systems (POWTS).

##### **Agency Procedure for Promulgation**

A public hearing is required and public hearings are scheduled for July 13, 15 and 17, 1998. The Division of Safety and Buildings is the agency unit primarily responsible for promulgation of this rule.

##### **Contact Person**

If you have questions regarding this rule, you may contact:

Jim Quast  
Dept. of Commerce  
Telephone (608) 266-9292

#### **Health & Family Services**

##### **Rule Submittal Date**

On June 11, 1998, the Wisconsin Department of Health & Family Services submitted a proposed rule affecting s. HFS 196.03 (11r) to the Legislative Council Rules Clearinghouse, relating to restaurants and the definition of "incidental food service".

##### **Analysis**

##### **Statutory authority:**

SS. 254.64 (1) (d) and 254.74 (1), Stats.

##### **Reason for rules, intended effects, requirements:**

This order amends the definition of "incidental food service" in the Department's rules for restaurants. Section HFS 196.04 (1) exempts incidental food services from the requirement to have a restaurant permit. The current definition of incidental food service in s. HFS 196.03 (11r) states that it is an operation consisting of meals served to the general public by a retail food establishment (these are licensed by DATCP) so long as gross annual food sales of the retail food establishment (grocery store, convenience store, bakery, deli) that are derived from the sale of meals amounts to no more than 25% of total sales.

The amendments change the percentage to less than 50%. The effect is to eliminate a restaurant permit requirement for an estimated 1000 retail food establishments that are currently issued permits by the Department and another 1100 retail food establishments that are currently issued permits by local health departments serving as agents of the Department. The change is the DHFS contribution toward eliminating "double licensing" of businesses which are currently licensed as retail food establishments by DATCP or its local government agents and issued a restaurant permit by DHFS or its local government agents.

##### **Agency Procedure for Promulgation**

Public hearing under ss. 227.16, 227.17 and 227.18, Stats.; approval of rules in final draft form by DHFS Secretary; and legislative standing committee review under s. 227.19, Stats.

##### **Contact Person**

Edward Rabotski  
Division of Health  
Telephone (608) 266-8294

#### **Insurance**

##### **Rule Submittal Date**

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance submitted a proposed rule to the Legislative Council Rules Clearinghouse on May 28, 1998.

##### **Analysis**

These changes will affect ch. Ins 26, Wis. Adm. Code, relating to the application process and requirements of preclicensing education for insurance agents.

##### **Agency Procedure for Promulgation**

The date for the public hearing is July 9, 1998.

**Contact Person**

To obtain a copy of the proposed rule, contact:

Meg Gunderson  
OCI Central Files  
Telephone (608) 266-0110

For additional information, please contact:

Robert Luck  
OCI Legal Unit  
Telephone (608) 266-0082  
E-mail at [bluck@mail.state.wi.us](mailto:bluck@mail.state.wi.us)

**Insurance****Rule Submittal Date**

In accordance with ss. 227.14 and 227.15, Stats., the Office of the Commissioner of Insurance submitted a proposed rule to the Legislative Council Rules Clearinghouse on May 28, 1998.

**Analysis**

These changes will affect ch. Ins 28, Wis. Adm. Code, relating to the requirements for continuing education for insurance intermediaries.

**Agency Procedure for Promulgation**

The date for the public hearing is July 9, 1998.

**Contact Person**

To obtain a copy of the proposed rule, contact:

Meg Gunderson  
OCI Central Files  
Telephone (608) 266-0110

For additional information, please contact:

Robert Luck  
OCI Legal Unit  
Telephone (608) 266-0082  
E-mail at [bluck@mail.state.wi.us](mailto:bluck@mail.state.wi.us)

**Natural Resources****Rule Submittal Date**

On June 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [WM-28-98] to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. NR 10, Wis. Adm. Code, relating to the 1998 migratory game bird season.

**Agency Procedure for Promulgation**

A public hearing is required, and will be scheduled.

**Contact Person**

Jon Bergquist  
Bureau of Wildlife Management  
Telephone (608) 266-8841

**Natural Resources****Rule Submittal Date**

On June 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [WM-21-98] to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects chs. NR 12 and 19, Wis. Adm. Code, relating to the wildlife damage abatement and claims programs.

**Agency Procedure for Promulgation**

A public hearing is required, and public hearings will be held on July 13, 14, 15 and 16, 1998.

**Contact Person**

Laine Stowell  
Bureau of Wildlife Management  
Telephone (608) 266-5463

**Natural Resources****Rule Submittal Date**

On June 9, 1998, the Wisconsin Department of Natural Resources submitted a proposed rule [FH-41-98] to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects s. NR 20.037 (2), Wis. Adm. Code, relating to the walleye bag limit adjustment after the spring spearing season.

**Agency Procedure for Promulgation**

A public hearing is required, and will be held on July 16, 1998.

**Contact Person**

Steve Hewett  
Bureau of Fisheries Mgmt. and Habitat Protection  
Telephone (608) 267-7501

**Public Defender****Rule Submittal Date**

Pursuant to s. 227.14 (4m), Stats., notice is hereby given that on June 15, 1998, the Office of the State Public Defender submitted a proposed rule order to the Wisconsin Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule order amends s. PD 3.02 (1), Wis. Adm. Code, relating to the cost of retained counsel.

**Agency Procedure for Promulgation**

A public hearing is required, and is scheduled for July 27, 1998, from 9:00 a.m. to 11:00 a.m. The organizational unit primarily responsible for promulgation of the rule is the SPD's Office of Legal Counsel.

**Contact Person**

Gina Pruski  
Deputy Legal Counsel  
Telephone (608) 266-6782

**Transportation****Rule Submittal Date**

On June 4, 1998, the Wisconsin Department of Transportation submitted a proposed rule to the Legislative Council Rules Clearinghouse.

**Analysis**

The proposed rule affects ch. Trans 132, Wis. Adm. Code, relating to temporary license plate and permits.

**Agency Procedure for Promulgation**

A public hearing is required, and is scheduled for July 14, 1998. The Division of Motor Vehicles/Bureau of Vehicle Registration is the agency unit primarily responsible for promulgation of this rule.

**Contact Person**

If you have questions regarding this rule, you may contact:

Julie A. Johnson, Paralegal  
Telephone (608) 266-8810

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# NOTICE SECTION

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## Notice of Hearings

### Commerce

#### (Plumbing, Chs. Comm 82-87)

Notice is hereby given that pursuant to ss. 101.02 (1), 101.63 (1), 101.73 (1) and 145.02 (3) and (4), Stats., the Department of Commerce announces that it will hold public hearings on proposed rules affecting chs. Comm 83, 85 and 91, relating to private onsite wastewater treatment systems (POWTS).

### Hearing Information

The public hearings will be held as follows:

Date & Time	Location
July 13, 1998 Monday 9:00 a.m. to 12:00 p.m. (noon)	Conference Room 3B WHEDA Bldg. 210 W. Washington Ave. MADISON, WI
July 15, 1998 Wednesday 9:00 a.m. to 12:00 p.m. (noon)	Room 241 Wis. Indianhead Tech. College 1900 College Dr. RICE LAKE, WI
July 17, 1998 Friday 9:00 a.m. to 12:00 p.m. (noon)	Comfort Suites 1951 Bond St. GREEN BAY, WI

### Written Comments

Interested people are invited to appear at the hearings and present comments on the proposed rules. People making oral presentations are requested to submit their comments in writing. People submitting comments will not receive individual responses. The hearing record on this proposed rulemaking will remain open until **July 31, 1998**, to permit submittal of written comments from people who are unable to attend a hearing or who wish to supplement testimony offered at a hearing.

These hearings are held in accessible facilities. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 261-6546 or TTY at (608) 264-8777 at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators, or materials in audio tape format will, to the fullest extent possible, be made available upon request by a person with a disability.

### Copies of Rules and Contact Person

A copy of the proposed rules may be obtained without cost from:

Margaret Slusser, telephone (608) 261-6546  
or (608) 264-8777 (TTY)  
Program Development Bureau  
Department of Commerce  
P.O. Box 2689  
Madison, WI 53701

Copies will also be available at the public hearings.

## **Analysis**

*Statutory authority:* ss. 101.02 (1), 101.63 (1), 101.73 (1), 101.82 (1) and 145.02 (3) and (4)

*Statutes interpreted:* ss. 145.02 (4), 145.045, 145.13, 145.135, 145.19, 145.20

Under s. 145.02, Stats., the Department of Commerce has the responsibility of safeguarding public health and the waters of the state relative to the construction, installation and maintenance of plumbing. One mechanism of the Department to fulfill this responsibility has been the promulgation of the state plumbing code, chs. Comm 81–87.

Currently, ch. Comm 83 of the plumbing code establishes specific and prescriptive minimum standards for the design, installation, inspection, and maintenance of private sewage systems. In some sense, the current rules dictate or prioritize specific solutions or the selection of certain types of private sewage systems. The current ch. Comm 83 has not been fully revised since 1980. In order for the plumbing code to be effective and reasonable, code standards must be updated periodically to address new health and safety concerns, issues and priorities as well as to reflect changing technologies, practices and materials. The proposed revisions represent a complete reevaluation of the private sewage program as well as the code.

The goals guiding the reengineered program and code are to:

- ☐ Minimize risk to public health and the water resources of the state, including groundwater;
- ☐ Provide measurable performance criteria for private onsite wastewater treatment systems, formerly known as private sewage systems, that ensure flexibility and predictability and facilitate improvements in system design and product development;
- ☐ Promote the recycling of constituents to minimize disposal volumes;
- ☐ Promote a wide range of treatment options that match users' needs and desires and the varied soil and site conditions in the state;
- ☐ Provide clear boundaries, based on system performance standards for the scope of the code;
- ☐ Promote competition in the design, installation and maintenance of systems, thereby providing users with efficient and cost-effective services;
- ☐ Provide procedures and establish priorities for the responsibilities of the design, installation and maintenance of systems to ensure that the respective responsibilities are clear and consistent and that compliance is occurring;
- ☐ Provide and promote active research and development of innovative technologies and solutions in the desired directions;
- ☐ Promote public education about treatment options and proper disposal of wastewater;
- ☐ Provide timely and efficient administration and enforcement of the regulatory system; and
- ☐ Acknowledge the powers and the abilities of municipalities to determine and control development.

## **Summary**

The following summarizes by chapter the significant highlights of the rewrite:

### **Ch. Comm 2, Fee Schedule:**

The revisions involve the fees to be charged by the Department for reviewing plans, petitions and products relative to private onsite wastewater treatment systems. The fees for plan review are now to be based upon the design wastewater flow of the system and whether the proposed treatment components of the system have been previously recognized under the product approval process. Overall, the revised fee structure does not increase the cost of these services or increase the Department's revenues.

### **Ch. Comm 5, Credentials:**

Changes to the chapter established a credentialing program for individuals who are to provide required monitoring and maintenance services for mechanical POWTS components. To qualify for the credential, individuals will either have to obtain training or have experience installing mechanical POWTS components.

### **Chs. ILHR 20–25, One– and 2– Dwelling Code, Chs. ILHR 50–64, Commercial Building Code, Ch. Comm 66, Multifamily Dwelling Code:**

Revisions to the appendices of these codes are to provide greater clarity as to the issuance of building permits for projects served by private onsite wastewater treatment systems. The other revisions provide a cross-reference to newly-created ch. Comm 91 for privies, composting toilets and incinerating toilets.

### **Ch. Comm 81, Definitions and Standards:**

The newly-created chapter consolidates into one location the plumbing code definitions and referenced national standards.

### **Ch. Comm 82, Design, Construction, Installation, Supervision and Inspection of Plumbing:**

The changes:

- Reflect consistent terminology relative to ch. Comm 83;
- Recognize that sanitation needs can also be fulfilled by nonplumbing means such as composting toilets;

- Eliminate from the plumbing code the mandates of connecting to public sewer and/or water in light of the powers and authority held by municipalities and sewer and water districts under ch. 66, Stats., and s. 281.145, Stats., to require such connections;
- Establish requirements for composting toilets and systems that use water or other liquids as a transport medium; and
- Establish requirements for sanitary dump stations which receive the wastes from the holding tanks of travel trailers and such.
- Mandate the use of water softeners that are used primarily for water hardness reduction to be of a demand initiated regeneration type when the brine solution is discharged to a private onsite wastewater treatment system.

**Ch. Comm 83. Private onsite Wastewater Treatment Systems:**

The chapter has been completely rewritten; the outline for the new chapter is:

**Ch. Comm 83**

**Subchapter I SCOPE AND APPLICATION**

- Comm 83.01 Purpose
- Comm 83.02 Scope
- Comm 83.03 Application
- Comm 83.04 Implementation

**Subchapter II ADMINISTRATION AND ENFORCEMENT**

- Comm 83.20 Purpose
- Comm 83.21 Sanitary Permits
- Comm 83.22 Plan Review and Approval
- Comm 83.23 Review Agent Status
- Comm 83.24 Petitions for Variance
- Comm 83.25 Governmental Programs
- Comm 83.26 Inspections and Testing
- Comm 83.27 Experimental POWTS
- Comm 83.28 Penalties
- Comm 83.29 Range of Responses

**Subchapter III GENERAL REQUIREMENTS**

- Comm 83.30 Purpose
- Comm 83.31 Principles
- Comm 83.32 Prohibitions and Limitations
- Comm 83.33 Abandonment

**Subchapter IV DESIGN AND INSTALLATION**

- Comm 83.40 Purpose
- Comm 83.41 Principles
- Comm 83.42 Application
- Comm 83.43 General Requirements
- Comm 83.44 Design Parameters for POWTS  
Components Consisting of In Situ Soil
- Comm 83.45 Installation

## Subchapter V MANAGEMENT

Comm 83.50 Purpose

Comm 83.51 Principles

Comm 83.52 Responsibilities

Comm 83.53 General

Comm 83.54 Management Requirements

Comm 83.55 Reporting Requirements

## Subchapter VI RECOGNIZED METHODS AND TECHNOLOGIES

Comm 83.60 Purpose

Comm 83.61 Acceptable Methods and Technologies

Comm 83.62 Parameters for Using Acceptable  
Methods and Technologies

Unlike the current chapter, the revised ch. Comm 83 does not dictate or prioritize specific solutions or the selection of systems; rather, the chapter delineates the critical factors, parameters, options, prohibitions and limitations for the design of private onsite wastewater treatment systems. Under the framework of ch. Comm 83, designers and owners would be allowed to choose the appropriate method for reducing the contaminant loads and dispersing the hydraulic flows by selecting and arranging prerecognized treatment components, single use designs, and other means in conjunction with site limitations for a particular project.

The revisions under ch. Comm 83 include:

- ▶ Numerical standards for system design and operation relative to fecal coliform, suspended solids, biological oxygen demand, grease, oil and particle size;
- ▶ No specific prohibition to use means other than subsurface soil for treatment and dispersal such as constructed wetlands or evapotranspiration beds;
- ▶ Requirements to obtain plan approval and a sanitary permit before the installation of a private onsite wastewater treatment system may begin—local governmental units would still be required to review plans employing “conventional” technology for residential projects, while plans for commercial projects or projects employing technologies not previously recognized would be reviewed by the Department (plans using other types of “prerecognized” solutions would be reviewed by either the local governmental unit or the Department, depending upon where the submitter wanted the service to be performed and if the local government unit had opted to provide this service as an agent of the Department);
- ▶ The testing of components before the system is put into service;
- ▶ A reference to the petition for variance process, ch. Comm 3, whereby an equivalent alternative that meets the intent of a rule, but not the letter, may be recognized — the petition for variance process is not to waive compliance and does not supersede statutory requirements or local ordinances;
- ▶ The allowance for local governmental units, by ordinance, to delay the implementation of some technologies upon the adoption of the code and to prohibit or limit the use of holding tanks, or constructed wetlands or evapotranspiration beds as POWTS treatment components;
- ▶ The prohibition of cesspools and outfall pipes discharging sewage to the surface, including existing installations;
- ▶ Design standards that:
  - Delineate the contaminant loads and hydraulic flows for residential occupancies based on bedrooms and occupants, and for other occupancies based upon estimated wastewater flows,
  - Allow for the segregation of graywater and blackwater wastes and designs to deal with each,
  - Specify parameters for subsurface treatment and dispersal, and
  - Recognize that treatment components may be installed inside buildings, provided the components are gas-tight and pose no health or safety risk to occupants;
- ▶ The establishment of an electronic maintenance tracking scheme that would monitor the required periodic servicing of private onsite wastewater treatment systems, depending upon the type of technology employed:
  - ✓ The maintenance service parameters would be established during either product review or plan review,
  - ✓ The maintenance tracking system would allow regulatory agencies and the Department to focus their enforcement activities,
  - ✓ The maintenance tracking scheme would be expanded to include existing holding tanks; and
- ▶ The recognition that responsibility to operate and maintain a private onsite wastewater treatment system in accordance with its approval is assigned to the owner and the failure to report required maintenance would be considered a violation of the code and a “human health hazard” allowing possible direct intervention to correct the situation.

#### **Ch. Comm 84, Plumbing Products:**

The revisions under this chapter:

- ☞ Require Department approval of all prefabricated treatment components (to be employed in a private onsite wastewater treatment system) to recognize the performance capabilities of the components through the Department's product approval process— product approvals are valid for 5 years and may be revised and renewed at the option of the submitter and may be rescinded by the Department (the Department's approval and recognition is determined with respect to the requirements and standards delineated in the plumbing code);
- ☞ Establish the voluntary submission and the Department's recognition of system design solutions, treatment and dispersal as private onsite wastewater treatment systems, thereby facilitating the design process and the plan review process (the review of such submissions would entail the input of a technical advisory committee comprised of interested parties involved in private onsite wastewater treatment systems);
- ☞ Establish performance and specification requirements for treatment and holding components; and
- ☞ Establish performance and specification requirements for geotextile fabrics used in private onsite wastewater treatment systems to prevent backfill material from entering absorption areas.

#### **Ch. Comm 85, Soil and Site Evaluations:**

This chapter currently addresses the proposed creation of subdivisions that are not to be served by public sewers and reflects the Department's regulatory involvement under ch. 236, Stats. The Department's role under ch. 236, Stats., is to facilitate the planning of adequate sewage disposal for new subdivisions. The Department proposes to reduce its regulatory involvement in the present plat review process, believing that the process is premature and duplicative. Premature, in that a type of system is preselected and assigned to a site without knowing the type of building to be served and its wastewater needs or the preferences of the owner; duplicative, in that plans for a private onsite wastewater treatment system will still be required to be submitted and approved for each project. Under s. 236.45, Stats., local governmental units will still be able to facilitate and regulate subdivisions relative to a wide variety of land use issues, including sewerage.

The rewritten chapter will focus on providing consistent high-quality soil and site data which may be used as the basis for selecting and designing a solution to address a project's wastewater management needs. Even though ch. Comm 83 does not dictate or prioritize specific solutions, the data gathered from soil and site evaluations must be of such quality as to document the site's limitations or abilities to support the proposed design during the plan review process. The rules of this chapter will no longer require the soil tester to recommend a system type for a site. The selection of the design is the decision of the owner in consultation with the designer, soil tester, installer and other parties involved in the POWTS design process.

#### **Ch. Comm 91, Sanitation:**

The newly-created chapter is not part of the plumbing code and establishes minimum standards for the design, installation and maintenance of sanitation systems and devices which are alternatives to traditional plumbing fixtures and systems. The chapter covers composting toilets and systems, incinerating toilets and systems. Local units would be able to enact more stringent requirements or use limitations for these types of sanitation systems.

Pursuant to s. 160.19 (2) (b), Stats., the Department has determined that the proposed rules under ch. Comm 83 and the rules under previous editions of ch. Comm 83 which govern existing private onsite wastewater treatment do not result in compliance with the preventive action limits under ch. NR 140 at a point of standards application for chlorides. The Department has concluded that it is not technically or economically feasible to reduce chlorides to the preventive action limits. The principle contributor of chlorides in the wastewater stream of residential occupancies is the use of water softeners. Anion exchange is the only chemical process capable of removing chloride from water. The physical processes of removing chloride, such as evaporation and reverse osmosis, would separate feedwater into two streams, one with a reduced chloride content and the other with an increased chloride content, and results in still having to treat and dispose of chloride-contaminated wastewater.

Also under s. 160.255, Stats., private sewage systems are exempted from meeting the ch. NR 140 nitrate standards by s. 160.255, Stats.: because of this legislative direction, nitrate standards were not included as part of the rules under ch. Comm 83.

### ***Initial Regulatory Flexibility Analysis***

#### ***1. Types of small businesses that will be affected by the rules:***

The proposed revisions concerning the rewrite of the private sewage code and related rules would affect those individuals or businesses that design, install, service or inspect privately-owned wastewater treatment systems. This would typically include plumbing shops, architectural or engineering design firms, soil testers, and septic tank and holding tank pumpers. The revisions would also potentially impact the manufacturers and distributors of plumbing products and materials relative to having the performance claims of their products validated for use in private sewage systems. Indirectly, the revisions would affect those businesses that require the use of a privately-owned wastewater treatment system to dispose of their domestic plumbing wastes.

#### ***2. Reporting, bookkeeping and other procedures required for compliance with the rules:***

New or additional reporting or bookkeeping procedures are as follows:

- ☞ The reporting of maintenance work required or performed on a privately-owned wastewater treatment system.

- ☞ Individuals wishing to provide required monitoring and maintenance services for mechanical private onsite wastewater treatment system (POWTS) components will need to be credentialed by the Department.

#### ***3. Types of professional skills necessary for compliance with the rules:***

The proposed rule revisions do not necessitate businesses to acquire any new or additional professional skills or services for compliance over that currently required.

Individuals desiring to become credentialed in order to provide required monitoring and maintenance services for mechanical POWTS components must either have completed approved training or have experience in installing mechanical POWTS components. Individuals who acquire the credential to provide such service will be required to fulfill continuing education obligations in order to renew the credential.



## ***Fiscal Estimate***

The proposed revisions concerning the rewrite of the private sewage code would affect the Department's workloads and processes in 3 programs.

The revisions would eliminate the Department's involvement in reviewing the proposed creation of subdivisions that would not be served by public sewers. The lost revenues and staff resources, 1/2 FTE (Full-Time Equivalent), associated with elimination of the program would be offset and redirected to other programs, such as plumbing product review or plan review.

The revisions to ch. Comm 2, Fee Schedule, are intended to restructure the fees charged for reviewing plans, petitions and products related to private sewage systems; however, the restructured fees are not intended to increase the cost of services to the Department's customers or to increase the Department's revenues.

The proposal under ch. Comm 5 to require a credential for individuals who provide monitoring and maintenance services for mechanical POWTS components would generate additional revenue for the Department which would be used to offset the cost of administering the credential program. It is anticipated that the additional workload associated with the new credential would be absorbed within current staffing levels and workloads. The cost for producing and processing a credential is estimated at \$15 per unit. It is estimated that approximately 2,000 individuals may be interested in acquiring the credential. The fee for the credential is proposed to be \$30 for 2 years. Under this assumption, the Department would then realize additional annual revenues of \$30,000 and annual costs of \$15,000.

The proposed revisions for the rewrite of the private sewage code do not mandate local governmental units to implement new or additional administration or enforcement strategies.

*Long-range fiscal implications:*

No long-range fiscal implications are anticipated at this time.

## **Notice of Proposed Rule**

### ***Health & Family Services (Community Services, Chs. HFS/HSS 30--)***

Notice is hereby given that pursuant to s. 50.034 (2), Stats., and according to the procedure set forth in s. 227.16 (2) (e), Stats., the Department of Health and Family Services will revise ch. HFS 89, Wis. Adm. Code, relating to residential care apartment complexes (formerly known as assisted living facilities), as herein proposed, without public hearing, unless a petition for a hearing is received by the Department within 30 days after publication of this notice on **June 30, 1998**. A petition for a hearing will be accepted if signed by 25 persons who will be affected by the proposed rule changes, the representative of a municipality that will be affected by the proposed rule changes or the representative of an association which represents a farm, labor, business or professional group that will be affected by the proposed rule changes.

## **Contact Person**

If you have any questions about these rule changes or about filing a petition for a hearing, write or phone:

Patricia Russell  
Bureau of Quality Assurance  
P.O. Box 309  
Madison, WI 53701-0309

## ***Analysis Prepared by the Dept. of Health & Family Services***

A recent session law, 1997 Wis. Act 13, amended s. 50.034, Stats., to change the generic name of a type of regulated residential facility called "assisted living facility" to "residential care apartment complex" and to define "stove" as the term is used in the statutory definition of "residential care apartment complex."

This order brings ch. HFS 89 into conformity with the two changes made in the program statute, s. 50.034, Stats., by 1997 Wis. Act 13. This has involved substituting the terms "residential care apartment complex," "a residential care apartment complex" and "residential care apartment complexes" for, respectively, "assisted living facility," "an assisted living facility" and "assisted living facilities" throughout ch. HFS 89, and replacing the definition of "stove" that had been in the rules since ch. HFS 89 went into effect in March 1997 with the statutory definition.

Before 1997 Wis. Act 13 went into effect in September 1997, "stove" was not defined in the program statute, but under ch. HFS 89 it was defined as a cooking appliance consisting of burners and an oven, with the oven permitted to be a separate microwave oven. Section 50.01 (1d), Stats., as amended by 1997 Wis. Act 13, states that a stove is a cooking appliance that is either a microwave oven of at least 1000 watts or consists of burners and an oven.

## ***Text of Proposed Rules***

SECTION 1. Chapter HFS 89 (title) is amended to read:

### **Chapter HFS 89**

#### **ASSISTED LIVING FACILITIES RESIDENTIAL CARE APARTMENT COMPLEXES (FORMERLY ASSISTED LIVING FACILITIES)**

**SECTION 2.** Wherever in ch. HFS 89, except in s. HFS 89.15, the terms “assisted living facility,” “an assisted living facility” and “assisted living facilities” are found, substitute, respectively, “residential care apartment complex,” “a residential care apartment complex” and “residential care apartment complexes.”

**SECTION 3.** HFS 89.11 (Note) is created to read:

HFS 89.11 (Note) Before September 6, 1997, residential care apartment complexes were called “assisted living facilities.” The name change was made by 1997 Wisconsin Act 13.

**SECTION 4.** HFS 89.13 (6) (Note) and (14) (Note) are amended to read:

HFS 89.13 (6) (Note) Congregate housing may become assisted living a residential care apartment complex if it chooses to offer supportive, personal and nursing services.

(14) (Note) Housing for the elderly may become assisted living a residential care apartment complex if it chooses to offer supportive, personal and nursing services.

**SECTION 5.** HFS 89.13 (30) is amended to read:

HFS 89.13 (30) “Stove” means a cooking appliance which that is a microwave oven of at least 1000 watts or that consists of burners and an oven. ~~The oven may be a separate microwave oven.~~

**SECTION 6.** HFS 89.15 is amended to read:

**HFS 89.15 Limitation on use of name “residential care apartment complex”.** As provided in s. 50.034 (5), Stats., an entity that does not meet the definition of assisted living residential care apartment complex under s. 50.01 (4) (Ld), Stats., may not designate itself as an “assisted living facility” a residential care apartment complex or use the word words “assisted living facility” “residential care apartment complex” to represent or tend to represent the entity as an assisted living facility a residential care apartment complex or services provided by the entity as services provided by an assisted living facility a residential care apartment complex.

## **Fiscal Estimate**

This order will not affect the expenditures or revenues of state government or local governments.

The order merely brings the Department’s rules for registration or certification of residential care apartment complexes, formerly known as assisted living facilities, into conformity with the program statute, s. 50.34, Stats., which was amended by 1997 Wis. Act 13 to change the generic name of this type of residential facility for adults from “assisted living facility” to “residential care apartment complex” and to define “stove” as the term is used in the program statute. There was not previously a definition of “stove” in the program statute, although the term was used there and so was defined in the rules. The order substitutes the new statutory definition for the somewhat different definition that has been in the rules.

Local governments are not involved in regulation of residential care apartment complexes and do not operate residential care complexes.

## **Initial Regulatory Flexibility Analysis**

Seven of the 45 (June 1998) registered or certified residential care apartment complexes in the state are small businesses as “small business” is defined in s. 227.114 (1) (a), Stats.

No residential care apartment complex will be affected by changes made by this order to the rules. The rule changes do no more than bring the rules into conformity with changes made to s. 50.034, Stats., by 1997 Wis. Act 13. 1997 Wis. Act 13 changed, effective September 6, 1998, the generic name of this type of facility from “assisted living facility” to “residential care apartment complex,” and created a statutory definition for “stove” which supersedes the definition of “stove” that was in the rules.

## **Notice of Hearing** **Health & Family Services** **(Health, Chs. HFS/HSS 110—)**

Notice is hereby given that pursuant to ss. 146.57 (4) and 227.11 (2), Stats., the Department of Health and Family Services will hold a public hearing to consider the revision of ch. HFS 167, Wis. Adm. Code, relating to the statewide poison control system.

### **Hearing Information**

The public hearing will be held:

<u>Date &amp; Time</u>	<u>Location</u>
July 14, 1998 Tuesday 1:30 to 3:00 p.m.	Room 292 Washington Square Building 1414 E. Washington Ave. MADISON WI

*The hearing site is fully accessible to people with disabilities.*

## **Analysis Prepared by the Dept. of Health & Family Services**

This rulemaking order amends the Department’s rules for operation of the two 24-hour regional poison control centers in the state, at the University of Wisconsin Hospital and Clinics in Madison, and the Children’s Hospital of Wisconsin in Milwaukee, to give the centers, at their request, more flexibility in staffing to respond to phone inquiries they receive.

The current rules specify the qualifications of on-line staff who interpret poison exposure data and provide poison intervention and management information. Yet about 70% of phone calls received by poison control centers originate from homes and do not require intervention. Consequently, most calls can be handled by staff who can provide the requested information about poisons without being expected to advise about intervention. Around the country, poison information providers with “appropriate health-oriented backgrounds,” but without the intervention skills of physicians, registered nurses, pharmacists, certified poison information specialists and other types of staff now specified in ch. HFS 167, are employed to staff poison information hotlines, with physicians, registered nurses, pharmacists or poison information specialists available to handle calls requiring advice about intervention.

This order amends ch. HFS 167 to permit poison control centers to employ poison information providers with “appropriate health-oriented backgrounds,” who receive at least 16 hours of relevant continuing education each year, to provide information about poisons and routine follow-up, but not intervention advice, related to toxic exposures or drug interaction interpretations for health care providers. The specified “appropriate health-oriented backgrounds” are licensed emergency medical technicians at basic, intermediate and paramedic levels, licensed practical nurses and pharmacy interns.

## **Contact Person and Written Comments**

To find out more about the hearing or to request a copy of the proposed changes to ch. HFS 167, write or phone:

Susan Uttech (608) 267-3561 or,  
if you are hearing-impaired, (608) 266-1511 (TTY)  
Maternal and Child Health Section  
Bureau of Public Health  
1414 E. Washington Ave.  
Madison, WI 53703

If you are hearing— or visually-impaired, do not speak English, or have other personal circumstances which might make communication at the hearing difficult and if you, therefore, require an interpreter, or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written comments on the proposed rule changes received at the above address no later than **July 21, 1998** will be given the same consideration as testimony presented at the hearing.

## **Fiscal Estimate**

These rule changes will not affect the expenditures or revenues of state government or local governments. There is no local government involvement in the administration of this program. The amount of state assistance to the centers is not affected by the rule changes.

The changes affect the two poison control centers in the state. One of the centers is operated by the Children’s Hospital of Wisconsin in Milwaukee, a private non-profit institution, and the other by the University of Wisconsin Hospital in Madison, formerly a part of state government, but now an independent authority. Together the centers provide services for the entire state, consisting mainly of 24-hour-a-day toll-free telephone access to information about poisons and about interaction of drugs and intervention advice in the event of a toxic exposure.

The Department administers a state assistance program to supplement hospital resources used to operate the poison control centers. The centers must comply with requirements set out in the Department’s rules for a statewide poison control system in order to receive state assistance.

## **Initial Regulatory Flexibility Analysis**

These rule changes apply to the two poison control centers in the state, one operated by the University of Wisconsin Hospital in Madison, formerly a part of state government, but now an independent authority, and the other by Children’s Hospital of Wisconsin in Milwaukee, a private non-profit institution. The rules will not directly affect small businesses, as “small business” is defined in s. 227.114 (1) (a), Stats.

## **Notice of Hearing Insurance**

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the proposed rulemaking order affecting ch. Ins 26, ss. Ins 6.59 and 6.61, Wis. Adm. Code, relating to the application process and requirements of prelicensing education for insurance agents.

## ***Hearing Information***

July 16, 1998	Room 23
Thursday	Commissioner of Insurance
10:00 a.m., or as soon	121 E. Wilson Street
thereafter as the matter	Madison, WI
may be reached.	

## ***Written Comments***

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Robert Luck, OCI, PO Box 7873, Madison WI 53707

## ***Analysis Prepared by the Commissioner of Insurance***

Statutory Authority: ss. 600.01 (1) (b) 5, 601.41 (3), and 628.04

Statute interpreted: s. 628.04 (3)

This order amends the preclicensing education and application requirements for individuals seeking to become licensed insurance agents in the four major lines in Wisconsin. These changes do the following:

- Eliminate the requirement of an original certificate of preclicensing data from the requirements necessary to submit a “complete” application,
- add the requirement of an original letter of clearance to the documents which must be submitted in a complete application for nonresident applicants,
- require that the form DJ–LG–250 from the department of justice be submitted not more than 180 days prior to the submission of an application rather than the original requirement of 90 days prior to the test date,
- mandates that intermediaries notify the commissioner of insurance of any change of name, and eliminate the requirement that intermediaries notify the commissioner of changes in the location of their records,
- requires credit and non–credit course providers to submit a computerized list of individuals completing preclicensing education programs in an electronic format
- rescind the provision permitting an approved noncredit program to be taught by an individual found to be qualified by demonstrating exemplary education or experience in the line of insurance being taught,
- modify the course requirements for preclicensing education and,
- eliminate the exemption from preclicensing education requirement from the preclicensing exemption form for nonresident agents seeking a nonresident license in Wisconsin.

## ***Fiscal Estimate***

The changes in chs. Ins 6 and 26 will only affect the requirements in preclicensing education courses, and the application process for individuals seeking an insurance license in Wisconsin. These changes will result in no state or local government fiscal effect.

## ***Initial Regulatory Flexibility Analysis***

This rule does not impose any additional requirements on small businesses.

## ***Contact Person***

A copy of the full text of the proposed rule and fiscal estimate may be obtained from Meg Gunderson, Services Section, Office of the Commissioner of Insurance, at (608) 266–0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707–7873.

## ***Notice of Hearing*** ***Insurance***

Notice is hereby given that pursuant to the authority granted under s. 601.41(3), Stats., and the procedure set forth in s. 227.18, Stats., OCI will hold a public hearing to consider the adoption of the proposed rulemaking order affecting Ch. Ins 28, ss. Ins 6.58 and 6.59, Wis. Adm. Code, relating to the requirements for continuing education for insurance intermediaries.

## Hearing Information

July 16, 1998  
Thursday  
10:00 a.m., or as soon  
thereafter as the matter  
may be reached.

Room 23  
Commissioner of Insurance  
121 E. Wilson Street  
Madison, WI

## Written Comments

Written comments on the proposed rule will be accepted into the record and receive the same consideration as testimony presented at the hearing if they are received at OCI within 14 days following the date of the hearing. Written comments should be addressed to: Robert Luck, OCI, PO Box 7873, Madison WI 53707

## Analysis Prepared by the Commissioner of Insurance

Statutory authority: ss. 601.41 (3), 628.04 (3),  
and 628.10 (2) (a)

Statute interpreted: s. 628.04 (3)

This order amends the continuing education requirements for individuals licensed as insurance intermediaries in the four major lines of property, casualty, life, accident and health, and the limited line of automobile. In order to satisfy the continuing education requirements, an applicant shall biennially complete 24 credit hours of study as described in ch. Ins 28. These changes do the following:

- Eliminate the 12 credit hour requirement of continuing education that was in effect for the period that ended February 15, 1997,
- allow nonresident agents to furnish evidence of compliance with another state's continuation program as proof of compliance with the continuing education requirement in Wisconsin,
- detail how courses completed between January 1 and April 16 of odd-numbered years are credited,
- add additional types of courses which will not qualify as continuing education courses,
- add more recognized programs of study and limit the fees that are paid for recognized courses,
- eliminate the requirement that providers transmit course participants' social security numbers to the office of the commissioner of insurance after course completion,
- eliminate the specific format for the course completion certificate and instead describe the information to be included in the certificates issued to agents completing approved courses,
- allow for the use of a national application and
- extend the time a home state letter of certification for original licensing and for compliance with continuing education requirements is accepted from 60 to 90 days.

## Fiscal Estimate

There will be no state or local government fiscal effect.

## Initial Regulatory Flexibility Analysis

This rule does not impose any additional requirements on small businesses.

## Contact Person

A copy of the full text of the proposed rule and fiscal estimate may be obtained from Meg Gunderson, Services Section, Office of the Commissioner of Insurance, at (608) 266-0110 or at 121 East Wilson Street, PO Box 7873, Madison WI 53707-7873.

## Notice of Hearings

### Natural Resources

(Fish, Game, etc., Chs. NR 1--)

Notice is hereby given that pursuant to ss. 29.085, 29.155, 29.174(3) and 227.11(2)(a), Stats., interpreting ss. 29.085, 29.155, 29.174(1) and (2), Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 1998 migratory game bird season. The regulations include:

1. Ducks -- the state is divided into two zones each with 60-day seasons. The season in the southern duck zone begins at noon October 3 and continues for 60 days, closing December 1. The north duck zone season begins at noon October 3 and continues through December 1. The daily bag limit in both zones is 6 ducks, including 4 mallards, of which only one may be a hen, and one canvasback for the entire 60 days in both zones.
2. Canada geese -- The state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management subzones within the Exterior Zone include Brown County, Burnett County, New Auburn, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone -- 68 days; Horicon Zone -- 95 days; Exterior Zone -- 95 days; and Mississippi River Subzone -- 70 days. The Burnett County and New Auburn Subzones are closed to Canada goose hunting.

3. A special youth duck hunt is established that will occur on the 14th day before the opening day of the regular duck season.

### ***Initial Regulatory Flexibility Analysis***

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

Notice is hereby further given that the hearings will be held on:

### ***Hearing Information***

<b>August 10, 1998</b> <b>Monday</b> <b>at 7:00 p.m.</b>	<b>Basement Auditorium</b> <b>La Crosse Co. Admin. Center</b> <b>400 4th St. North</b> <b>(use south entrance)</b> <b>La Crosse</b>
<b>August 11, 1998</b> <b>Tuesday</b> <b>at 7:00 p.m.</b>	<b>Theater</b> <b>Nicolet College &amp; Tech. Institute</b> <b>County G</b> <b>Rhineland</b>
<b>August 12, 1998</b> <b>Wednesday</b> <b>at 7:00 p.m.</b>	<b>Conference Room 101</b> <b>Commons</b> <b>UW-Waukesha</b> <b>500 N. University Ave.</b> <b>(Use student parking lot)</b> <b>Waukesha</b>

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jon Bergquist at (608) 266-8841 with specific information on your request at least 10 days before the date of the scheduled hearing.

### ***Written Comments***

Written comments on the proposed rule may be submitted to Mr. Jon Bergquist, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **August 13, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [WM-28-98] and fiscal estimate may be obtained from Mr. Bergquist.

### ***Fiscal Estimate***

The rule package establishes the seasons and bag limits for waterfowl hunting. The proposed changes will not result in any significant changes in spending or revenue.

## **Notice of Hearing**

### ***Natural Resources***

***(Fish, Game, etc, Chs. NR 1--)***

Notice is hereby given that pursuant to ss. 29.174(3), 227.11(2)(a) and 227.24, Stats., interpreting ss. 29.107, 29.1075 and 29.174(1) and (2), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WM-36-98(E) pertaining to a deer herd control hunt for deer management unit 67A. This emergency order will take effect on June 19, 1998. The proposed rule:

1. Establishes a 4-day antlerless-only firearm deer hunt in Unit 67A during October 29 -- November 1 to coincide with the annual fall teachers' convention. Similar deer hunts have proven successful in reducing antlerless deer populations in other units in 1996 and 1997. Bowhunting will be allowed during this time period, but will be restricted to antlerless only. The early archery season would be extended by 4 days and will end on the Thursday immediately preceding the regular gun deer season. Blaze orange clothing requirements will apply to all hunting activity in Unit 67A, except waterfowl, during the 4 days.
2. Provides free antlerless-only tags for unit 67A. Hunters would be eligible to receive up to 3 permits with their archery license and another 3 permits with their gun deer license. Similar to 1997, these tags would be available to all at license outlets throughout the unit, as well as, statewide at DNR offices.
3. Establishes an either-sex bag limit for the regular 9-day gun season in November.

## Hearing Information

July 27, 1998  
Monday  
at 7:00 p.m.

Basement Meeting Room  
Marquette Co. Courthouse  
77 W. Park Street  
Montello

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call William Mytton at (608) 266-2194 with specific information on your request at least 10 days before the date of the scheduled hearing.

## Written Comments

Written comments on the emergency rule may be submitted to Mr. William Mytton, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **July 29, 1998**. Written comments will have the same weight and effect as oral statements presented at the public hearing. A copy of the emergency rule [WM-36-98(E)] may be obtained from Mr. Mytton.

## Fiscal Estimate

This rule establishes a special deer herd control hunt in deer management unit 67A for 1998.

Primary financial impact of this rule is the loss of license fee revenue from the \$3.00 application fee hunter's choice applications and the \$12.00 permit fee from bonus deer permit sales in this unit. These fees will not be collected because of the issuance of special free antlerless permits for this unit.

Estimated loss is based upon 1997 sales figures:

Hunter's Choice Applications	- 6,814 x \$3.00 =	\$ 20,442.00
Bonus Deer permits	- 8,698 x \$12.00 =	<u>\$104,376.00</u>
TOTAL REVENUE DECREASE		\$124,818.00

## Notice of Hearings

### Natural Resources

(*Fish, Game, etc., Chs. NR 1--*)

Notice is hereby given that pursuant to ss. 29.59, 29.598 and 227.11(2)(a), Stats., interpreting ss. 29.59 and 29.598, Stats., the Department of Natural Resources will hold public hearings on revisions to chs. NR 12 and 19, Wis. Adm. Code, relating to the wildlife damage abatement and claims program. 1997 Wis. Act 27 requires the DNR to promulgate rules for eligibility and funding requirements for the wildlife damage abatement program and the wildlife damage claim program in order to maximize cost-effectiveness of these programs. The proposed rules:

1. Define the terms "lands suitable for hunting deer", "contiguous land" and "land suitable for hunting".
  2. Clarify bear shooting permit procedures.
  3. Establish criteria for determining deer are unavailable to be harvested under shooting permits and create a process for granting exemptions for future shooting permit and claims eligibility. The proposed rules also create uniformity between the shooting permit program and the wildlife damage abatement and claims program.
  4. Further enhance human health and safety in deer damage shooting permit situations by expanding the blaze orange requirement to include all shooting permit hunting access hunters, including bowhunters.
  5. Require participating counties to use administration, abatement and claims procedures described in the Department's wildlife damage abatement and claims program technical manual.
  6. Require explicit deadlines for accounting and distribution of program funds to participating counties.
  7. Establish criteria for implementing the new abatement cost-sharing of 75% by participating counties and participation standards for enrollees.
  8. Establish explicit requirements and procedures for implementing new laws governing hunting access and seek to make the hunting access requirement more enforceable.
  9. Establish eligibility criteria which excludes crops which are stranded in the field over winter for claims eligibility.
  10. Require counties to prescribe deer damage shooting permits where enrollees have a 2-year history of damage losses exceeding \$1,000.
  11. Establish the requirement that all permanent fence projects must be approved by the department prior to funding and entering into a contract with an enrollee in order to assure that projects are warranted and are cost-effective.
- Notice is hereby further given that pursuant to ss. 29.59, 29.598 and 227.24, Stats., and section 91.37(11x)(b), 1997 Wis. Act 27, interpreting ss. 29.59 and 29.598, Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. WM-22-98(E) relating to the wildlife damage abatement and claims programs. This emergency order will take effect on July 1, 1998. The emergency order:
1. Defines the terms "contiguous land" and "land suitable for hunting".

2. Requires participating counties to use administration, abatement and claims procedures described in the department's wildlife damage abatement and claims program technical manual.
3. Requires explicit deadlines for accounting and distribution of program funds to participating counties.
4. Establishes criteria for implementing the new abatement cost-sharing of 75% by participating counties and participation standards for enrollees.
5. Establishes explicit requirements and procedures for implementing new laws governing hunting access, and seeks to make the hunting access requirement more enforceable.
6. Establishes the requirement that all permanent fence projects must be approved by the department prior to funding and entering into a contract with an enrollee in order to assure that projects are warranted and are cost-effective.

### ***Initial Regulatory Flexibility Analysis***

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### ***Hearing Information***

July 13, 1998 Monday at 1:00 p.m.	DNR Hatchery 951 W. Maple Street Spoonerville
July 14, 1998 Tuesday at 1:00 p.m.	Room 149 Marathon Co. Courthouse 500 Forest Street Wausau
July 15, 1998 Wednesday at 1:00 p.m.	Winnebago Co. Courthouse Extension 625 E. Cty. Y Oshkosh
July 16, 1998 Thursday at 1:00 p.m.	Boscobel City Hall 1006 Wisconsin Avenue Boscobel

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Laine Stowell at (608) 266-5463 with specific information on your request at least 10 days before the date of the scheduled hearing.

### ***Written Comments***

Written comments on the proposed rule and emergency rule may be submitted to Mr. Laine Stowell, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707 no later than **July 20, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule, proposed rule [W/M-21-98] and fiscal estimate may be obtained from Mr. Stowell.

### ***Fiscal Estimate***

Fiscal Impact of Rule—Implementation of the 1997 Wisconsin Act 27 and the amendment to this Act passed in AA 48 to ASA1 to 97 AB768 will cost \$3,037,990 in NEW claims, administration and abatement costs, offset by \$46,076 NEW revenues from the newly created turkey license surcharge (see following table). The total estimated cost of implementing the new rule will be \$77,285. A total of \$66,128 will be incurred by counties but will be reimbursed by the department, so the total cost of \$77,285 will accrue to the state. There will also be a savings from 2 changes to the rule of \$311,975 for a net total of an estimated \$234,690 in costs savings. These costs and savings from the permanent rule accrue as follows:

1. Rules regarding Deer Shooting Permits and Harvest Objective Compliance—1 hour/county; 3 staff; \$25/staff for sal. & travel; 60 co. = \$4,500
2. Rules requiring County use of the WDACP Tech. Manual—Devel. \$25,000 plus printing 510,000 plus training 51,000=536,000
3. Rule requiring County quarterly reimbursement requests & DNR funding procedures—67 counties X 4 times/yr X \$12 sal. = \$3,216
4. Department and County implementation of the new hunting access administrative code procedures—67 counties X2 complaints/county X 2 hrs. X \$15/hr. = \$4,020; 2,419 participants X 5.52% annual participation increase X \$3.00/log = \$7,659; hunting access training & Adm. = 2,553 98 participants X \$22.50 (1.5 hrs staff time for map devel. and training of enrollee) \$57,443; \$57,443+\$7,659+\$4,020=\$69,122
5. Elimination of overwinter claims—will vary from year to year (1991 had Halloween storm, 1993 had excellent harvest conditions). Overwinter claims \$250,000 in 1991, \$0 in 1993, average \$125,000 claims savings, plus 75 claimants X \$273 mean admin. costs per claim=\$20,475.



6. Shooting permit abatement requirement— 105 1997 claimants needed shooting permits but they were not prescribe, 5.52% increase participation each year, 1hr/permit County time at \$15/hr & 1hr/permit DNR time at \$18/hr—[(105X5.52%+105)X\$15 County sal. & bene.]+[(105X5.52%+105)X \$18 State sal. & bene.]+[(105X5.52%+105)X \$166,500 County + \$1998 State = \$3,663 Cost, Would save \$1,500/claim in losses if prescribed by the county early in summer, or 111 X \$1,500= \$166,500.

Fiscal Impact of 1997 Wisconsin Act 27 and Associated Proposed Administrative Rules

ISSUE	ESTIMATE OF COST	SOURCE OF CHANGE
Costs of Expanded, Added or Enhanced Services		
Claims Cap Increase to \$15,000	\$760,000	Statute
Beekeeper Exemption for Abatement	\$732,465	Statute
Full Farm Appraisals	\$330,436	Statute
Stored Crops Admin., Abate, & Claims	\$310,237	Statute
Cost Sharing Increase to 75%	\$225,562	Statute
Turkey Admin. & Abate.*	\$83,538	Statute
Harvest Objective Compliance Admin.	\$4,500	Rule
Technical Manual Devel. & Admin.	\$36,000	Statute & Rule
Quarterly Reimbursement Requirement	\$3,216	Rule
Hunting Access Training & Admin.	\$61,463	Statute & Rule
Hunting Access Materials	\$7,659	Rule
Shooting Permit Abatement Requirement	\$3,663	Rule
Costs of Reduced Funding Through Surcharge Diversion**		
Urban Wildlife Control Grant	\$25,000	Statute
Urban Wildlife Biologist	\$46,200	Statute
Wildlife Damage Assistant & Services	\$50,000	Statute
<b>Costs Subtotal</b>	<b>-\$3,037,990</b>	
Adding Funding		
Turkey License Surcharge	+\$46,076	Statute
Rule Change Savings		
Ineligibility of Overwinter Claims	+\$145,475	Rule
Shooting Permit Abatement Requirement	+\$166,500	Rule
<b>Savings &amp; Revenue Subtotal</b>	<b>+\$358,051</b>	
<b>Total</b>	<b>-\$2,679,939</b>	
*Estimated Cost of Turkey Administration & Abatement ONLY; Do Not Expect Turkey Claims Appraisal to exceed \$250 deductible.		
**These Revenues Were Diverted From the WDACP By the Legislature in Act 27.		

## **Notice of Hearing**

### ***Natural Resources***

***(Fish, Game, etc., Chs. NR 1--)***

Notice is hereby given that pursuant to ss. 29.174(3) and 227.11(2)(a), Stats., interpreting s. 29.174(1) and (2), Stats., the Department of Natural Resources will hold a public hearing on the amendment of s. NR 20.037(2), Wis. Adm. Code, relating to readjustment of daily bag limits for walleye in response to tribal harvest. The proposed rule allows the Department secretary to readjust the daily bag limits for walleye or the minimum size limits for muskellunge after the spring spearfishing season, based on anticipated tribal harvest. If the actual tribal walleye harvest subsequently exceeds anticipated levels, the daily bag limit or minimum size limit will be adjusted the next year to reflect both the actual harvest from the previous year and the harvest goal for the next year.

Notice is hereby further given that pursuant to 29.174(3), 227.11(2)(a) and 227.24, Stats., interpreting s. 29.174(1) and (2), Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. FH-42-98(E) relating to readjustment of daily bag limits for walleye in response to tribal harvest. This emergency rule took effect on May 30, 1998. This emergency order allows the Department secretary to readjust the daily bag limits for walleye or the minimum size limits for muskellunge after the spring spearfishing season, based on anticipated tribal harvest.

### ***Initial Regulatory Flexibility Analysis***

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

### ***Hearing Information***

**July 16, 1998**  
**Thursday**  
**at 5:00 p.m.**

**DNR Service Center**  
**8770 Hwy J**  
**Woodruff**

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Steve Hewett at (608) 267-7501 with specific information on your request at least 10 days before the date of the scheduled hearing.

### ***Written Comments***

Written comments on the proposed rule and the emergency rule may be submitted to Mr. Steve Hewett, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707 no later than **July 24, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearing. A copy of the emergency rule, proposed rule [FH-51-98 & FH-42-98(E)] and fiscal estimate may be obtained from Mr. Hewett.

### ***Fiscal Estimate***

There is no fiscal effect.

## **Notice of Hearings**

### ***Natural Resources***

***(Fish, Game, etc., Chs. NR 1--)***

Notice is hereby given that pursuant to ss. 26.38 and 227.11(2)(a), Stats., interpreting s. 26.38, Stats., the Department of Natural Resources will hold public hearings on the creation of ch. NR 47, subch. VII, Wis. Adm. Code, relating to the private forest landowner grant program. Chapter NR 47, subch. VII provides procedures for implementing a forestry assistance grant program for private forest landowners. The rules are proposed for the purpose of implementing and administering the legislatively created private forest landowner grant program, under s. 26.38, Stats. The rules propose:

1. Criteria for eligible lands, being all nonindustrial private forest lands at least 10 but not more than 500 acres in size;
2. Forest practices eligible for grants, including stewardship plan development; reforestation and afforestation; forest improvement; soil and water protection and improvement; wetland protection, restoration and creation; riparian protection and improvement; and terrestrial wildlife and habitat enhancement, including threatened and endangered species habitat and management of natural communities and native vegetation;
3. Eligible and ineligible costs;
4. Grant calculation, which provides grants for 65% of the actual eligible costs and limits them to \$10,000 for any individual, person or project annually;
5. Grant application, selection and approval processes; and
6. A system where grants may be withheld, or a refund pursued from the grantee, if a grantee unjustly benefits from the grant program.

This rule was implemented as an emergency rule which took effect on February 20, 1998. The purpose of these hearings is to solicit additional comments and suggestions prior to adoption of a permanent rule.

**Initial Regulatory Flexibility Analysis**

Notice is hereby further given that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

Notice is hereby further given that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

**Hearing Information**

July 21, 1998 Tuesday 1:00 p.m.	Room 107 DNR Northern Region Service Center 107 Sutliff Avenue Rhinelander
July 22, 1998 Wednesday 1:00 p.m.	Room 511 GEF #2 101 S. Webster St. Madison

Notice is hereby further given that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Linda DePaul at (608) 266-2388 with specific information on your request at least 10 days before the date of the scheduled hearing.

**Written Comments**

Written comments on the proposed rule may be submitted to Ms. Linda DePaul, Bureau of Forestry, P.O. Box 7921, Madison, WI 53707 no later than **July 31, 1998**. Written comments will have the same weight and effect as oral statements presented at the hearings. A copy of the proposed rule [FR-4-98] and fiscal estimate may be obtained from the Bureau of Forestry by calling (608) 266-2388.

**Fiscal Estimate**

There is no fiscal effect.

**Notice of Hearing**  
*Public Defender*

Notice is hereby given that pursuant to s. 977.02 (3), Stats., and interpreting s. 977.07, Stats., the Office of the State Public Defender will hold a public hearing at the time and place indicated below to consider the amendment of s. PD 3.02 (1), relating to the cost of retained counsel.

**Hearing Information**

The public hearing will be held:

Date & Time	Location
July 27, 1998 Tuesday 9:00 a.m. to 11:00 a.m.	2nd Floor 315 N. Henry St. MADISON WI

*Reasonable accommodations will be made at the hearing for people with disabilities.*

**Analysis by Agency**

Statutory authority: s. 977.02 (3)

Statute interpreted: s. 977.07

The proposed amendment to s. PD 3.02 (1) establishes a separate cost of counsel amount for ch. 55, Stats., (protective placement) cases. Under the current schedule, the category “civil commitment” includes the cost of counsel for both ch. 55, Stats., and ch. 51, Stats., cases. A time study conducted by the State Public Defender’s Office revealed that ch. 55, Stats., cases are more complicated and time-consuming than ch. 51, Stats., cases and, in fact, that ch. 55, Stats., cases equate with felony cases. In addition, the SPD’s present collections amounts and trial division case weights for ch. 55, Stats., cases are the same as those for felony cases. The proposed amendment to s. PD 3.02 (1) would thus make the cost of counsel amount for ch. 55, Stats., cases consistent with felony cases.

### ***Initial Regulatory Flexibility Analysis***

This rule would not have a regulatory effect on small businesses.

### ***Fiscal Estimate***

The proposed amendment to s. PD 3.02 (1) is primarily technical in nature. Although it is possible that the amendment could slightly increase the number of ch. 55, Stats., cases handled by the State Public Defender’s Office, the agency expects any increase to be nominal.

### ***Contact Person***

For copies of the proposed rule, or if you have questions, please contact:

Gina Pruski, Deputy Legal Counsel  
Telephone (608) 266–6782  
315 North Henry St.  
Madison, WI 53703–3018

### ***Written Comments***

Written comments regarding this rule may be submitted in addition to or instead of verbal testimony at the public hearing. Such comments should be addressed to the contact person at the address stated above, and must be received by **July 27, 1998**.

### ***Notice of Hearing*** ***Transportation***

Notice is hereby given that pursuant to ss. 85.16 (1), 227.11 and 341.09, Stats., and interpreting s. 341.09, Stats., the Department of Transportation will hold a public hearing at the time and place indicated below, to consider the amendment of ch. Trans 132, Wis. Adm. Code, relating to temporary license plates and permits.

### ***Hearing Information***

The public hearing is scheduled as follows:

<b>July 14, 1998</b>	<b>Room 421</b>
<b>Tuesday</b>	<b>Hill Farms State Trans. Bldg.</b>
<b>10:00 a.m.</b>	<b>4802 Sheboygan Ave.</b>
	<b>MADISON, WI</b>

*Parking for people with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.*

An interpreter for the hearing–impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

### ***Written Comments***

The public record on this proposed rule–making will be held open until close of business on **July 16, 1998**, to permit the submission of written comments from people unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to:

Bev Schwartz,  
Bureau of Vehicle Services, Room 301  
Dept. of Transportation  
P. O. Box 7909  
Madison, WI 53707–7909

**Analysis Prepared by the Wis. Dept. of Transportation**

*Statutory authority:* ss. 85.16 (1), 227.11 and 341.09  
*Statute interpreted:* s. 341.09

General Summary of Proposed Rule. The proposed amendments to ch. Trans 132 are necessary to implement statutory changes adopted in 1997 Wis. Act 27. Section 3961p of the Act amended s. 341.04, Stats., to require that purchasers of automobiles, station wagons or motor trucks weighing 8,000 pounds or less obtain and display temporary operation license plates within two business days after purchase. Other changes were made by the Act to s. 341.09, Stats., to provide for issuance of the required temporary operation plates by the Department and by motor vehicle dealers.

Section 1 of the proposed rule amends the definition of "purchase" to include a lease. This reflects the fact that s. 341.09, Stats., was amended to permit dealers to issue temporary plates to persons leasing as well as purchasing vehicles from the dealer.

Sections 2 and 3 of the proposed rule provides for the addition of a portion of the vehicle identification number on temporary plates as a further element of identification.

Sections 5, 6 and 7 of the proposed rule amend s. Trans 132.05 to provide for issuance of temporary plates to motor vehicle dealers without prepayment of fees and to repeal limitations on the number of plates which can be obtained at one time. These changes in procedure reflect the fact that statutory changes have increased the number of plates which motor vehicle dealers will need to satisfy their customers' needs and the fact that no fee may be charged for issuance of temporary plates to purchasers from the dealer of automobiles, station wagons or motor trucks with a registered weight of 8,000 pounds or less.

Sections 8, 9, 10 and 11 make changes to s. Trans 132.06 to reflect that dealers must now issue temporary plates at no charge to persons purchasing or leasing automobiles, station wagons or light trucks from the dealer; may collect a fee from non-residents; and may collect a fee from any resident who has purchased a vehicle from a source other than the issuing dealer. In the latter case, the dealer may also collect a separate fee for special assistance to the purchaser.

Section 14 of the proposed rule adds a new provision to s. Trans 132.06 to provide that the plate number be written on the application form and a copy of the form provided to the purchaser. This reflects the fact that the Department has decided to eliminate a separate form which had acted as a receipt for the purchaser.

Section 15 amends s. Trans 132.07, relating to recordkeeping, to reflect the elimination of the separate receipt form and to permit electronic as well as manual recordkeeping systems. The information which had been contained on the receipt form MVD 2467 will still have to be kept as part of the records of plate issuance by the dealer.

Section 17 repeals s. Trans 132.09, due to the fact that the Department will no longer charge a prepayment fee for providing temporary plates to dealers.

Section 18 repeals and recreates s. Trans 132.10 to provide that if the Department contracts with persons under s. 341.09, Stats., to issue temporary plates, the provisions of ch. Trans 132 applicable to dealers will also be applicable to contractors.

**Fiscal Estimate**

Chapter Trans 132 implements statutes enacted in 1997 Wis. Act 27, the 1997-99 biennial budget. Chapter Trans 132 has no fiscal impact other than the fiscal impact resulting from the statute. The following fiscal impact is estimated for these statutory provisions:

Annual Cost to DOT

Total Cost:	7.3 FTE	\$505,400
Funded in Budget:	4.0 FTE	\$389,900
Remains Unfunded:	3.3 FTE	\$115,500

Annual Revenue to the Transportation Fund:

+\$562,500

One-time Cost to DOT:

Total cost:	\$13,000 plus DP cost
Funded in Budget:	None
Remains Unfunded:	\$13,000 (the program will not be automated because data processing work was not funded)

The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally-recognized American Indian tribes or bands.

**Initial Regulatory Flexibility Analysis**

This proposed rule will have no adverse impact on small businesses.

## ***Copies of Proposed Rule***

Copies of the rule may be obtained upon request, without cost, by writing to:

Bev Schwartz, (608) 267–5253  
Bureau of Vehicle Services, Room 301  
Division of Motor Vehicles  
P. O. Box 7909  
Madison, WI 53707–7909

Hearing-impaired individuals may contact the Department using TDD (608) 266–3096. Alternate formats of the proposed rule will be provided to individuals at their request.

## **Notice of Hearing** ***Workforce Development*** ***(Worker’s Compensation,*** ***Chs. DWD 80–82)***

Notice is given that pursuant to ss. 102.15 and 102.28 (2)(b), Stats., the Department of Workforce Development proposes to hold a public hearing to consider the revision of ch. DWD 80, Wis. Adm. Code, relating to self–insurance.

### ***Hearing Information***

July 16, 1998                      Room 263–B, GEF 1  
Thursday                        201 E. Washington Ave.  
10:00 a.m.                      Madison, WI

This hearing is held in an accessible facility. If you have special needs or circumstances which may make communication or accessibility difficult at the hearing, please call (608) 266–1340, or Telecommunication Device for the Deaf (TTY) at 608–266–1340, at least 10 days prior to the hearing date. Accommodations such as interpreters, English translators or materials in audio tape format will, to the fullest extent possible, be made available on request by a person with a disability.

### ***Copies of Rule***

A copy of the rules to be considered may be obtained from the State Department of Workforce Development, Division of Worker’s Compensation, 201 E. Washington Avenue, P.O. Box 7901, Madison, Wisconsin, 53707–7901, by calling (608) 266–1340, or at the appointed times and places the hearings are held.

### ***Written Comments***

Interested persons are invited to appear at the hearing and will be afforded the opportunity of making an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. Written comments from persons unable to attend the public hearing, or who wish to supplement testimony offered at the hearing may be submitted no later than **July 17, 1998**, for inclusion in the summary of public comments submitted to the Legislature. Any such comments should be submitted to Richard D. Smith at the address noted above. Written comments will be given the same consideration as testimony presented at the hearing. Persons submitting comments will not receive individual responses.

### ***Analysis of the Proposed Rule***

Statutory Authority: ss. 102.15(1) and 102.28(2)(b)

This rule authorizes the Department to expand the duration of self–insurance orders from one year to three years, although the employer’s annual reporting requirements for financial and claims information, and the \$200 annual fee, are retained. The rule clarifies that the annual fee does not apply to political subdivisions that self–insure. The rule also clarifies the Department’s authority to require other timely monitoring reports, particularly those related to the employer’s organizational changes.

In Wisconsin, no self–insured employer has ever defaulted on its obligation to pay worker’s compensation benefits due to financial problems. Still, under current law, as a condition of self– insurance, the Department typically requires self–insured employers to provide some form of security. This rule establishes standards for determining the amounts and types of security that the Department may require from self–insured employers. It also provides that the Department may call the security provided by the employer and use it to pay and administer that employer’s worker’s compensation liabilities if the Department has a reasonable basis to believe that the employer is not or will not be able to timely pay its worker’s compensation liabilities from other employer resources.

### ***Fiscal Estimate***

The proposed rule changes are intended to simplify and clarify requirements for employers to be exempted from the need to carry worker’s compensation insurance. The rule authorizes the Department to expand the duration of self–insurance orders from one year to three years, even though the employer is still required to report financial and claims information to the Department annually and to pay an annual self–insurance fee.

fee of \$200. The rule establishes a minimum security requirement for self-insurers of \$500,000, unless certain financial criteria are met to exempt the employer from this requirement. The rule also requires employers to use standard Department insurance and security forms. The Department is also granted authority to "call" the employer's security to administer and pay worker's compensation claims for which the employer is liable, if the Department determines the employer is not willing or able to timely meet its worker's compensation claim liabilities. The proposed rule changes do not modify the application fee for employers seeking exemption from the duty to insure, or the annual fee charged to employers already exempted. Therefore, there is no expected increase or decrease in revenue related to fees and assessments. The rule changes will reduce some of the staff work involving the issuance of annual renewal orders, but this will not result in a reduction in staff positions. Other aspects of the proposed rule change will modestly increase the staff workload, especially related to determining appropriate security requirements for self-insurers. The proposed rule changes to s. DWD 80.60 are not expected to have a significant impact on program revenues or expenditures.

### ***Initial Regulatory Flexibility Analysis***

1. Types of small businesses that will be affected by the rules.  
Businesses that usually employ 3 or more employees or which pay \$500 in a calendar quarter to all employees are subject to the Worker's Compensation Act and this rule.
2. Reporting, bookkeeping and other procedures required for compliance with the rules.  
The rule establishes security standards for self-insured employers for purposes of worker's compensation. Few, if any, small businesses are self-insured.
3. Types of professional skills necessary for compliance with the rules.  
Financial. The rule relates to financial security instruments for self-insurance.

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***NOTICE OF SUBMISSION OF PROPOSED RULES TO THE PRESIDING OFFICER OF EACH HOUSE OF THE LEGISLATURE,***  
***UNDER S. 227.19, STATS.***

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*Please check the Bulletin of Proceedings for further information on a particular rule.*

**Agriculture, Trade & Consumer Protection (CR 98–14):**

Chs. ATP 32, 33 and 35 – Relating to bulk fertilizer and pesticide storage and agricultural cleanups.

**Commerce (CR 97–138):**

Chs. ILHR 20–25 – Relating to the Uniform Dwelling Code.

**Health & Family Services (CR 97–126):**

SS. HSS 45.05 (11) and HFS 46.06 (11) – Relating to outdoor play space for children attending day care centers.

**Natural Resources (CR 98–18):**

Chs. NR 500, 502, 507, 512, 520 and 680 and ss. NR 504.09, 509.07, 514.04 and 620.15 – Relating to solid and hazardous waste management activities.

**Natural Resources (CR 98–21):**

SS. NR 487.03, 487.05, 487.07, 487.09 and 487.10 – Relating to the clean fuel fleet program to reduce volatile organic compound (VOC) and oxides of nitrogen emissions from fleet vehicles.

**Natural Resources (CR 98–22):**

Ch. NR 10 and ss. NR 11.10, 15.02, 19.09, 19.30 & 27.03 – Relating to wildlife management housekeeping changes.

**Natural Resources (CR 98–23):**

Chs. NR 20 & 26 and ss. NR 21.04, 23.05 & 25.10 – Relating to recreational and commercial fishing regulations and fish refuges on the inland, outlying and boundary waters.

**Natural Resources (CR 98–24):**

Chs. NR 10 & 11 and ss. NR 15.02 & 45.09 – Relating to hunting and trapping.

**Social Workers, Marriage & Family Therapists and Professional Counselors Examining Board (CR 97–119):**

SS. SFC 1.05 (2) and (4), 11.035, 14.01 (2) and 14.02 (2) – Relating to examination requirements and procedures, academic programs equivalent to master's and doctorate degrees in professional counseling, and temporary certificates for professional counselors.



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## ADMINISTRATIVE RULES FILED WITH THE REVISOR OF STATUTES BUREAU

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*The following administrative rules have been filed with the Revisor of Statutes Bureau and are in the process of being published. The date assigned to each rule is the projected effective date. It is possible that the publication of these rules could be delayed. Contact the Revisor of Statutes Bureau at (608) 266-7275 for updated information on the effective dates for the listed rules.*

**Financial Institutions (CR 98-4):**

An order affecting ss. S-L 13.03 and DFI-SL 13.03  
(3) (d) 6., relating to creating an exception for savings and  
loan associations to the 10% down payment requirement for  
mortgage loan made to meet the objectives of the federal  
Community Reinvestment Act.

Effective 08-01-98.

**Hearing & Speech Examining Board (CR 98-12):**

An order affecting chs. HAS 1 to 7, relating to hearing  
instrument specialists.

Effective 08-01-98.

**Natural Resources (CR 97-140):**

An order affecting ss. NR 10.001 and 10.102, relating to  
bear hunting.

Effective 08-01-98.

**Natural Resources (CR 98-25):**

An order creating ch. NR 166, relating to the safe drinking  
water loan program.

Effective 08-01-98.

**Public Instruction (CR 98-10):**

An order creating ch. PI 36, relating to full-time and  
part-time open enrollment.

Effective 08-01-98.

**Public Instruction (CR 98-11):**

An order affecting ch. PI 40, relating to the youth options  
program.

Effective 08-01-98.

**Regulation & Licensing (CR 98-8):**

An order affecting chs. RL 11 to 13, 16 to 18 and 22 to 26,  
relating to real estate brokers and real estate salespeople.

Effective 08-01-98.

**Transportation (CR 98-40):**

An order amending s. Trans 276.07 (31), relating to allowing  
the operation of "double bottoms" (and certain other  
vehicles) on certain specified highways.

Effective 08-01-98.

**University of Wisconsin System (CR 97-149):**

An order affecting s. UWS 18.06, relating to conduct on  
University lands.

Effective 09-01-98.

**Veterans Affairs (CR 98-37):**

An order affecting chs. VA 1 to 4, 11 and 13, relating to the  
health care aid grant, retraining grant, primary mortgage  
loan, economic assistance loan, consumer loan and veterans  
assistance programs.

Effective 08-01-98.

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## *RULES PUBLISHED IN THIS WIS. ADM. REGISTER*

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*The following administrative rule orders have been adopted and published in the **June 30, 1998 Wisconsin Administrative Register**. Copies of these rules are sent to subscribers of the complete Wisconsin Administrative Code, and also to the subscribers of the specific affected Code.*

*For subscription information, contact Document Sales at (608) 266-3358.*

**Administration (CR 98-5):**

An order amending s. WGC 13.05 (3) (a) and repealing s. WGC 13.15 (4) (c), relating to kennel license fees.  
Effective 07-01-98.

**Agriculture, Trade & Consumer Protection****(CR 97-127):**

An order affecting chs. ATPC 90 and 91, relating to fair packaging and labeling, weighing and measuring devices, and selling commodities by weight, measure or count.  
Effective 07-01-98.

**Commerce (CR 98-6):**

An order repealing and recreating chs. Comm 122 and 128, relating to the Physician and Health Care Provider Loan Assistance Programs.  
Effective 07-01-98.

**Corrections (CR 96-180):**

An order affecting ss. DOC 308.01, 308.03 and 308.04, relating to administrative confinement of inmates.  
Effective 07-01-98.

**Corrections (CR 98-2):**

An order creating ss. DOC 328.04 (3) (o) and (p), 332.015, 332.02 (2) to (7) and 332.15 to 332.18, relating to lie detector testing of probationers and parolees who are sex offenders.  
Effective 07-01-98.

**Employee Trust Funds (CR 96-145):**

An order affecting s. ETF 10.12 (4), relating to withdrawal of funds invested in the Public Employee Trust Fund by a separate retirement system, as permitted by s. 40.03 (1) (n) and (2) (q), Stats.  
Effective 07-01-98.

**Employee Trust Funds (CR 97-73):**

An order creating s. ETF 10.08, relating to defining termination of employment for purposes of eligibility for benefits administered by the Department of Employee Trust Funds.  
Effective 07-01-98.

**Employee Trust Funds (CR 97-104):**

An order creating s. ETF 10.65, relating to the Department of Employee Trust Funds refunding contributions to the Wisconsin Retirement System (WRS) that exceed the contributions limits set forth in the internal revenue code and the Wisconsin Statutes.  
Effective 07-01-98.

**Employee Trust Funds (CR 97-105):**

An order creating s. ETF 10.79, relating to the Department of Employee Trust Funds' procedures for locating missing participants and transferring the balances of abandoned accounts to the annuity reserve.  
Effective 07-01-98.

**Natural Resources (CR 97-123):**

An order amending s. NR 20.13 (2) (a) and (c), relating to ice fishing shelters.  
Effective 07-01-98.

**Natural Resources (CR 97-141):**

An order affecting ch. NR 149, relating to laboratory certification and registration.  
Effective 07-01-98 and 09-1-99.

**Physical Therapists Affiliated Credentialing Board (CR 97-133):**

An order affecting ss. PT 1.01, 1.03, 2.01, 2.02, 3.01, 4.01 and 6.01 and ch. PT 8, relating to application requirements, examinations, temporary licenses, unprofessional conduct and biennial license renewals of physical therapists.  
Effective 07-01-98.

**State Fair Park Board (CR 98-3):**

An order affecting ss. SFP 2.07, 2.16 and 2.18 and ch. SFP 7, relating to regulation of the State Fair Park and establishing a bail bond schedule.  
Effective 07-01-98.

**Tourism (CR 97-155):**

An order affecting ss. Tour 1.02, 1.03 and 1.05, relating to the joint effort marketing program.  
Effective 07-01-98.

**Transportation (CR 97-154):**

An order creating ch. Trans 512, relating to the Transportation Infrastructure Loan Program.  
Effective 07-01-98.

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## SECTIONS AFFECTED BY RULE REVISIONS AND CORRECTIONS

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The following administrative rule revisions and corrections have taken place in June, 1998, and will be effective July 1, 1998. For additional information, contact the Revisor of Statutes Bureau at (608) 266-7275.

### REVISIONS

#### Agriculture, Trade & Consumer Protection:

**Ch. ATCP 90**

- S. ATCP 90.08 (21)
- S. ATCP 90.09 (2) and (4) (a)

**Ch. ATCP 91**

- S. ATCP 91.01 (11), (12m) and (14)
- S. ATCP 91.015 (entire section)
- S. ATCP 91.02 (entire section)
- S. ATCP 91.03 (entire section)
- S. ATCP 91.04 (entire section)
- S. ATCP 91.041 (entire section)
- S. ATCP 91.042 (entire section)
- S. ATCP 91.05 (entire section)
- S. ATCP 91.11 (entire section)

**Ch. ATCP 92**

- S. ATCP 92.02 (6) and (7)

#### Commerce:

***Financial Resources for Businesses & Communities, Chs. Comm 105-128*****Ch. Comm 122 (entire chapter)****Ch. Comm 128 (entire chapter)**

#### Corrections:

**Ch. DOC 308**

- S. DOC 308.01 (entire section)
- S. DOC 308.03 (1) to (10)
- S. DOC 308.04 (entire section)

**Ch. DOC 328**

- S. DOC 328.04 (3) (o) and (p)

**Ch. DOC 332**

- S. DOC 332.015 (entire section)
- S. DOC 332.02 (2) to (7)
- S. DOC 332.15 (entire section)
- S. DOC 332.16 (entire section)
- S. DOC 332.17 (entire section)
- S. DOC 332.18 (entire section)

#### Employe Trust Funds

**Ch. ETF 10**

- S. ETF 10.08 (entire section)
- S. ETF 10.12 (4) (b), (c) and (d)
- S. ETF 10.65 (entire section)
- S. ETF 10.79 (entire section)

#### Natural Resources:

***Fish, Game, etc., Chs. NR 1--*****Ch. NR 20**

- S. NR 20.13 (2) (a) and (c)

#### Natural Resources:

***Environmental Protection--General, Chs. NR 100--*****Ch. NR 149**

- S. NR 149.02 (1) and (3)
- S. NR 149.03 (5) (c), (d), (L), (m), (r) to (w), (8m), (14m) and (25)
- S. NR 149.04 (1) (a) to (h), (4) and Table 1
- S. NR 149.05 (1) (c) and (d) and (5) and Table 2
- S. NR 149.06 (1) (b) and (6)
- S. NR 149.07 (1), (2), (4), (5) and (6)
- S. NR 149.09 (entire section)
- S. NR 149.11 (1), (3), (5) and (7)
- S. NR 149.13 (entire section)
- S. NR 149.14 (3) (c) and (f)
- S. NR 149.21 (1) (a), (6) (a), (7) (a) and (8) (a)
- S. NR 149.25 (entire section)
- S. NR 149.42 (1) (a)
- S. NR 149.43 (3) and (4)
- S. NR 149.45 (2) (intro.)

#### Physical Therapists Affiliated Credentialing Board

**Ch. PT 1**

- S. PT 1.01 (entire section)
- S. PT 1.03 (1) (b), (2) and (3) (intro.)

**Ch. PT 2**

- S. PT 2.01 (6)
- S. PT 2.02 (entire section)

**Ch. PT 3**

- S. PT 3.01 (2)

**Ch. PT 4**

- S. PT 4.01 (1) (e)

**Ch. PT 6**

S. PT 6.01 (entire section)

**Ch. PT 8 (entire chapter)****State Fair Park Board:****Ch. SFP 2**

S. SFP 2.07 (2) and (3)

S. SFP 2.16 (4) (b) and (5) (b)

S. SFP 2.18 (entire section)

**Ch. SFP 7**

S. SFP 7.01 (entire section)

S. SFP 7.02 (entire section)

**Tourism****Ch. Tour 1**

S. Tour 1.02 (2m), (4) and (6) (f)

S. Tour 1.03 (1), (3) (a), (d), (e) and (g), (3r) and (4)

S. Tour 1.05 (1)

**Transportation:****Ch. Trans 512 (entire chapter)****EDITORIAL CORRECTIONS**

Corrections to code sections under the authority of s. 13.93 (2m) (b) are indicated in the following listing:

**Commerce:***Petition for Variance Procedures, Ch. Comm 3*

**Ch. Comm 3** renumbered from **ch. ILHR 3**, and  
corrections made under s. 13.93 (2m) (b) 6. and 7.

**Commerce:***Signs for Smoking Areas, Ch. Comm 4*

**Ch. Comm 4** renumbered from **ch. ILHR 4**, and  
corrections made under s. 13.93 (2m) (b) 6. and 7.

**Corrections:****Ch. DOC 331**

S. DOC 331.14 (2) (a) and (3) (b)

S. DOC 331.16 (4)

**Employee Trust Funds****Ch. ETF 10**

S. ETF 10.65 (2) (b)

**Physical Therapists Affiliated Credentialing Board****Ch. PT 7**

S. PT 7.02 (18)

**State Fair Park Board:****Ch. SFP 2**

S. SFP 2.20 (2) and (3)

**ERRATA**

Several sections have been reprinted to correct printing errors such as dropped copy, and are indicated in the following listing:

**Natural Resources:***Fish, Game, etc., Chs. NR 1--***Ch. NR 20**

S. NR 20.03 (1) (a) and (c)

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## *FINAL REGULATORY FLEXIBILITY ANALYSES*

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### 1. Administration (CR 98-5)

SS. WGC 13.05 (3) (a) and 13.15 (4) (c) – Relating to kennel license fees.

#### Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

#### Summary of Comments:

No comments were reported.

### 2. Agriculture, Trade & Consumer Protection (CR 97-127)

Ch. ATPC 90 – Relating to Fair Packaging and Label Measure or Count.

Ch. ATPC 91 – Relating to Selling Commodities by Weight.

Ch. ATPC 92 – Relating to Weighing and Measuring Devices.

#### Summary of Final Regulatory Flexibility Analysis:

This rule relates to:

- Weighing and measuring devices.
- Fair packaging and labeling.
- Selling commodities by weight, measure or count.

This rule will modify current DATCP rules under chs. ATPC 90-92, Wis. Adm. Code.

#### *Weighing and Measuring Devices*

Current law prohibits any person from causing a weight or measure to be incorrect. This rule clarifies that a person who manufactures or distributes a weighing or measuring device causes a weight or measure to be incorrect if:

- The person knows or reasonably should know that the weighing or measuring device has a defect that may cause an incorrect weight or measure.
- The person fails to take steps, which that person is reasonably capable of taking, which would prevent the defect from causing incorrect weights or measures.
- The defective weighing or measuring device causes an incorrect weight or measure which is attributable, at least in part, to the defect.

#### *LP Gas Labeling*

Current DATCP rules spell out fair packaging and labeling requirements for consumer commodities. Among other things, a package must be labeled to show the identity of the product, the net quantity of the product, and the identity of the responsible seller.

The current rules do not adequately address the labeling of liquefied petroleum gas (LP gas) in portable cylinders. This rule establishes the following labeling requirements for LP gas sold in portable containers:

- The tare weight of each container must appear on the outside of the container.
- The net quantity of LP gas must be disclosed on a label or tag attached to the container.
- A declaration of responsibility (identifying the responsible seller) must be attached to the container or posted at the point of sale.

#### *Testing Samples for Net Quantity*

Current DATCP rules spell out the statistical sampling procedures and compliance standards which DATCP uses to determine whether packages contain the full amounts claimed on package labels. This rule modifies the current rules to conform to current standards specified by the National Institute of Standards and Technology (NIST) Handbook 133, "Checking the Net Contents of Packaged Goods."

#### *Selling Commodities By Weight, Measure or Count*

Under s. 98.06(1), Stats., liquid commodities must ordinarily be sold by liquid measure and nonliquid commodities must ordinarily be sold by weight. Other methods of sale are allowed if they are in general use and give accurate information as to the quantity of the commodity sold. However, DATCP rules regulate methods of sale to prevent unfair competition and deception of consumers.

Current DATCP rules spell out uniform methods of sale for certain commodities including fresh fruits, fresh vegetables, meat, poultry, seafood, cheese, bulk commodities and ready-to eat foods. This rule modifies the current rules to reflect current market practices and national standards. This rule:

- Incorporates the general requirements of s. 98.06, Stats.
- Clarifies current standards related to the sale of bulk commodities by weight.
- Gives retailers greater flexibility to sell "ready to eat" foods by weight, measure or count, at the retailer's option.
- Defines "weight" to exclude packaging materials and other extraneous materials.
- Modifies current standards related to fresh fruits, fresh vegetables, meat, poultry, seafood, cheese and pizza.
- Incorporates, without change, current statutory standards related to sales of petroleum products and motor fuel.
- Makes organizational and drafting changes to streamline and clarify the current rules.

The department does not expect this rule to have any adverse impact on small business. This rule will maintain protection for consumers while allowing small businesses greater flexibility in their methods of sale.

Summary of Comments from Legislative Committees:

The rule was referred to the legislature on March 31, 1998. The department received no comments or requests for hearings from the legislature.

**3. Commerce (CR 98-6)**

Chs. Comm 122 & 128 – Physician and Health Care Provider Loan Assistance Program.

Summary of Final Regulatory Flexibility Analysis:

Although the grants are given to individual physicians and other primary health care providers, clinics use the program in order to attract and keep these providers in communities where there are provider shortages. Most of these clinics would qualify as “small businesses” and would, therefore, be indirectly assisted by these grants. No issues were raised by small business during the rulemaking process, nor were any comments received. Small businesses must have general business accounting and bookkeeping skills; however, the individual health care providers are primarily responsible for providing documentation to the Department.

Summary of Comments of Legislative Standing Committees:

The rules were reviewed by the Assembly Committee on Health and the Senate Committee on Health, Human Services, Aging, Corrections, veterans, and Military Affairs. No comments were received.

**4. Corrections (CR 96-180)**

Ch. DOC 308 – Administrative confinement of inmates.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

**5. Corrections (CR 98-2)**

Chs. DOC 328 & 332 – Lie detector testing of probationers and parolees who are sex offenders.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

**6. Employee Trust Funds (CR 96-145)**

S. ETF 10.12 – Withdrawal of funds invested in the Public Employee Trust Fund by a separate retirement system as permitted by s. 40.03 (1) and (2) (q), Stats.

Summary of Final Regulatory Flexibility Analysis:

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Summary of Comments:

No comments were reported.

**7. Employee Trust Funds (CR 97-73)**

S. ETF 10.08 – Defining terminations of employment for purposes of eligibility for benefits administered by the department of Employee Trust Funds.

Summary of Final Regulatory Flexibility Analysis:

The proposed rule itself does not directly affect small businesses as defined in s. 227.114 (1), Stats.

Summary of Comments:

No comments were reported.

**8. Employee Trust Funds (CR 97-104)**

S. ETF 10.65 – Department of Employee Trust Funds refunding contributions to the Wisconsin Retirement System that exceeds the contributions limits set forth in the internal revenue code and the Wisconsin Statutes.

Summary of Final Regulatory Flexibility Analysis:

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Summary of Comments:

No comments were reported.

**9. Employee Trust Funds (CR 97-105)**

S. ETF 10.79 – Department of Employee Trust Funds procedures for locating missing participants and transferring the balances of abandoned accounts to the annuity reserve.

Summary of Final Regulatory Flexibility Analysis:

The Department anticipates that the provisions of this proposed rule will have no direct adverse effect on small businesses.

Summary of Comments:

No comments were reported.

**10. Natural Resources (CR 97-123)**

S. NR 20.13 – Ice fishing shelters on the Fox River.

Summary of Final Regulatory Flexibility Analysis:

The proposed rules do not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources Committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

**11. Natural Resources (CR 97-141)**

Ch. NR 149 – Laboratory certification and registration.

Summary of Final Regulatory Flexibility Analysis:

Approximately 29 of the 550 regulated laboratories would fit the definition of “small business”. Many of the proposed changes are routine clarifications of the code and will not create new requirements. However, the proposed fee changes, reference sample changes and test category changes may have an effect on small businesses. The proposed rule does not require any new reports to be submitted by small businesses. As in the past, laboratories will need to submit reference sample results for renewal and corrective action reports when they fail reference samples. The cost of preparing these reports depends on the number of analytes included in the reference sample study and the laboratory’s capabilities.

Summary of Comments by Legislative Review Committees:

The rules were reviewed by the Assembly Natural Resources committee and the Senate Agriculture and Environmental Resources Committee. There were no comments.

**12. Physical Therapists Affiliated Credentialing Board (CR 97-133)**

Chs. PT 1-4, 6 & 8 – Application requirements, examinations, temporary licenses, unprofessional conduct and biennial license renewals of physical therapists.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

**13. Wisconsin State Fair Park (CR 98-3)**

Chs. SFP 2 & 7 – Ages at state fair park and the state fair park bond schedule.

Summary of Final Regulatory Flexibility Analysis:

This rule proposal has minimal effect on small businesses in Wisconsin. To the extent that it does effect small businesses, it grants them additional rights without imposing any additional costs.

This rule changes several references in SFP rules from 18 years of age to 17 years of age. This means that if something was previously prohibited for persons under 18 years of age, it is now prohibited for persons under 17 years of age. There is one exception to this lowering of age. Current rules require persons serving, selling or vending alcoholic beverages to be 18 years of age or older. That provision was not changed. These changes do not have a negative impact on small businesses.

The other thing this rule does is establish a bond schedule for persons who violate provisions of SFP 1-6. Since this will only apply to persons who violate the rules, it is not anticipated that this will have an effect on small businesses. While it is true that small businesses may be faced with paying a forfeiture, that is completely within their control because they are able to determine whether they will violate the rules and, therefore, whether they will be subject to the bond.

Summary of Comments from Legislative Committees:

On March 23, 1998, the Board submitted the above rule for legislative committee review. On March 24, 1998, the rule was referred to the Senate Committee on Agriculture and Environmental Resources. On April 21, 1998, the rule was withdrawn from the Senate Committee on Agriculture and Environmental Resources and reassigned to the Senate Committee on Transportation, Agriculture, and Rural Affairs. On April 1, 1998, the rule was referred to the Assembly Committee on Tourism and Recreation. Neither the Senate Committees nor the Assembly Committee took any action during their review periods.

**14. Tourism (CR 97-155)**

SS. Tour 1.02, 1.03 and 1.05 – Relating to the joint effort marketing program.

Summary of Final Regulatory Flexibility Analysis:

These proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

Summary of Comments:

No comments were reported.

**15. Transportation (CR 97-154)**

Ch. Trans 512 – Transportation Infrastructure Loan Program.

Summary of Final Regulatory Flexibility Analysis:

This proposed rule will have no significant adverse impact on small businesses.

Summary of Comments:

No comments were reported.

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## *EXECUTIVE ORDERS*

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*The following is a listing of recent Executive Orders issued by the Governor.*

**Executive Order 333.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff on Memorial Day.

**Executive Order 334.** Relating to the Repeal and Re-Establishment of the State Interagency Coordinating Council.

**Executive Order 335.** Relating to the Creation of the Governor's Blue Ribbon Task Force on Aquaculture.

**Executive Order 336.** Relating to a Proclamation that the Flag of the United States and the Flag of the State of Wisconsin be Flown at Half-Staff as a Mark of Respect for the Memory of the Late Barry M. Goldwater, Former United States Senator from the State of Arizona.

**Executive Order 337.** Relating to a Proclamation of a State of Emergency.



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# *PUBLIC NOTICES*

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## **Public Notice**

*Health & Family Services  
(Medical Assistance Reimbursement of Nursing Homes)*

### **State of Wisconsin Medicaid Nursing Facility Payment Plan: FY 98–99**

The State of Wisconsin reimburses Medicaid–certified nursing facilities for long–term care and health care services provided to eligible persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. This program, administered by the State’s Department of Health and Family Services, is called Medical Assistance (MA) or Medicaid. Federal statutes and regulations require that a state plan be developed that provides the methods and standards for setting payment rates for nursing facility services covered by the payment system. A plan that describes the nursing home reimbursement system for Wisconsin is now in effect as approved by the Federal Health Care Financing Administration (HCFA).

The Department is proposing changes in the methodology for establishing rates of payment to nursing homes in the plan describing the nursing home reimbursement system. The changes will be effective **July 1, 1998**. The proposed changes that comprise this plan amendment will not be finalized until the public comment period is concluded. The public comment period will continue until at least September 1, 1998. The plan amendment’s changes will be effective retroactive to **July 1, 1998**. Rates for facilities will be final only after they are set pursuant to the methodologies that are ultimately adopted. A computer model is used to ensure that the methods conform to the budget. A printout of the budgetary impact of the methods as a whole and rates in aggregate is generated. Individuals and organizations may obtain or review copies of the draft proposed changes covered by the plan amendment, draft copies of the model printout, and a worksheet that may be used to calculate approximate individual facility rates based on the proposed methodologies (i.e., the proposed rates). Opportunity to comment on the proposed changes will be provided in public meetings. See the end of this notice for information about the public meetings and where to send for or to review copies of the draft proposed changes and the printout.

The proposed changes would update the payment system and make various payment–related policy changes. Some of the changes are necessary to implement policies that were included in the Wisconsin 1997–99 Budget Act; some of the changes are technical in nature; some clarify various payment plan provisions.

The estimated increase in annual aggregate expenditures attributable to these changes for nursing homes serving MA recipients is approximately \$30,322,500 all funds (\$18,193,500 federal), excluding patient liability.

#### Proposed Changes

Proposed changes are as follows:

1. Modify the methodology to distribute approximately 3.5% or \$30,322,500 (all funds), excluding patient liability, whichever is less, in the payment rate year of July 1, 1998, through June 30, 1999. Specifically, we will create Section 7.00 to provide the methods for an increase for all rate elements except capital. Section 7.00 will contain a sample rate calculation included as part of the plan amendment, the policy on applicable formula maximums drafted to clarify the implementation of the Section 7.00 rate on rate payment system, and references to other sections of the plan. The Department will update the parameters for calculating the capital rates.
2. Revise various references to specific years and related provisions to clarify what is the base year, and to incorporate Section 7.00, the rate year and various payment policies that are specific to a given year.
3. Clarify and update the bed banking provisions.

4. Incorporate technical and style revisions as needed in select sections requiring clarification.
5. Incorporate miscellaneous changes as necessary to implement the intent of the payment plan.

### ***Copies of the Proposed Changes:***

Copies of the proposed changes may be obtained free of charge by calling or writing as follows:

#### **Regular Mail**

Attention: Nursing Home Medicaid Payment Plan  
Bureau of Health Care Financing  
Division of Health  
P.O. Box 309  
Madison, WI 53701-0309

#### **Phone**

Telephone (608) 264-6730

#### **FAX**

Attention: Nursing Home Medicaid Payment Plan  
FAX number (608) 264-7720

#### **E-Mail**

E-mail at [cobbjd@dhfs.state.wi.us](mailto:cobbjd@dhfs.state.wi.us)

Copies of the proposed changes will be available for review at the main office of any county department of social services or human services from July 15 through at least September 1.

Since changes will be continuously developed during the public comment period, additional materials will be developed and will be available by the options above or by attending the public meetings. If you request copies of the proposed changes, you will receive a copy of the final changes or the final plan amendment.

Before finalizing the plan amendment, the Department may modify its proposed changes after considering the comments received during the public comment period. The plan amendment will not be submitted to the federal government until after the public comment period and will be effective retroactively to **July 1, 1998**.

### ***Written Comments***

Except for the public meetings, only written comments will be considered. Written comments on the proposed changes may be sent by FAX, E-mail, or regular mail to the Bureau of Health Care Financing. The FAX number is (608) 264-7720. The E-mail address is: [cobbjd@dhfs.state.wi.us](mailto:cobbjd@dhfs.state.wi.us). Regular mail may be sent to the above address. All written comments will be reviewed and considered.

The written comments will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 250 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changes, based on comments received.

### ***Public Meetings***

There will also be public meetings to seek input on the proposed plan amendment. If you would like to be sent a public meeting notice, please fax or write using the above addresses. The proposed changes may be revised, based on comments received at these forums.

# Public Notice

## *Health & Family Services (Medical Assistance Reimbursement of Hospitals)*

The State of Wisconsin reimburses hospitals for medical services provided to low-income persons under the authority of Title XIX of the Federal Social Security Act and ss. 49.43 to 49.47, Wisconsin Statutes. The State's Department of Health and Family Services administers this program which is called Medicaid or Medical Assistance (MA). Federal statutes and regulations require state plans, one for outpatient services and one for inpatient services, which provide the methods and standards for paying for hospital outpatient and inpatient services.

State plans are now in effect for the reimbursement of outpatient hospital services and inpatient hospital services. The Department is proposing to make several changes in these plans effective **July 1, 1998**.

### **Outpatient Hospital Services**

Proposed changes in the state plan for reimbursement for outpatient hospital services may include:

1. Revision of the rural hospital adjustment percentages to ensure that payments do not exceed authorized funds. Modification of the qualifying criteria that requires a 55% combined Medicare and Medicaid utilization rate to allow greater consistency from year to year with regard to whether a hospital qualifies and to allow a number of hospitals with utilization rates consistently just below the qualifying rate to also qualify. The amount paid for this adjustment would not change. However, this modification would cause a redistribution of the funds among qualifying hospitals.
2. Modification of supplemental payments to essential access city hospitals (EACH) to maintain compliance with federal payments limits.
3. For the indigent care allowance, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for an allowance, and modification of the methodology for distributing the available funds to qualifying hospitals in order to carry out provisions of 1997 Wis. Act 27 and to maintain compliance with federal payment limits.
4. Modification of the procedures for processing administrative adjustments to require a hospital to respond to the Department's proposed adjustment only if there is a disagreement with the calculation. If the hospital does not respond by the specified due date, the proposed adjustment will be final. This will simplify what has been an administratively burdensome notification and response process.
5. Modification of the qualifying criteria for funding of Medicaid deficits in governmental hospitals to require a hospital to submit a request for this funding to the Department so it may determine if the hospital qualifies for funding under these provisions.

### **Inpatient Hospital Services**

Proposed changes in the state plan for reimbursement for inpatient hospital services may include:

1. For the payment system which is based on diagnosis-related groups (DRGs), adjustment of DRG weighting factors, standard DRG base rates, area wage indices, and capital and medical education payments to implement the average rate adjustment provided by 1997 Wis. Act 27.
2. Updating the time period used for the qualifying criteria and determination of the payment for the pediatric supplement to reflect the most recent time period. Also, revision of the definition of Medicaid pediatric days to:
  - a) Exclude days of Medicaid covered stays on which Medicaid made no payment due to the stay being covered by some other payer such as private hospitalization insurance to more accurately reflect the intent of this provision; and

- b) Count only the days for discharges that occurred within the specified year and not count a portion of the days related to discharges that occurred outside the specified year.
3. Modification of the cost report requirements for major border–status hospitals to allow the Department to use the most recent audited cost report available to establish rates, which is consistent with the basis for which the Department establishes rates for in–state hospitals.
4. Modification of the qualifying criteria for funding of Medicaid deficits in governmental hospitals to require a hospital to submit a request for this funding to the Department so it may determine if the hospital qualifies for funding under these provisions.
5. Revision of the rural hospital adjustment percentages to ensure that payments do not exceed authorized funds. Modification of the qualifying criteria that requires a 55% combined Medicare and Medicaid utilization rate to allow greater consistency from year to year with regard to whether a hospital qualifies and to allow a number of hospitals with utilization rates consistently just below the qualifying rate to also qualify. The total amount paid for this adjustment would not change. However, this modification would cause a redistribution of the funds among qualifying hospitals.
6. Updating the disproportionate share adjustment parameters to recognize a more current proportion of services provided by hospitals to Medicaid recipients.
7. Modification of supplemental payments to essential access hospitals (EACH) to maintain compliance with federal payments limits.
8. For the indigent care allowance, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for an allowance, and modification of the methodology for distributing the available funds to qualifying hospitals in order to carry out provisions of 1997 Wis. Act 27 and to maintain compliance with federal payment limits.
9. For the general assistance disproportionate share supplement, adjustment of the maximum available funding, modification of the criteria for a hospital to qualify for the supplement, and modification of the methodology for distributing the available funds to qualifying hospitals in order to carry out provisions of 1997 Wis. Act 27 and to maintain compliance with federal payment limits.
10. Modification of the procedures for processing administrative adjustments to require a hospital to respond to the Department’s proposed adjustment only if there is a disagreement with the calculation. If the hospital does not respond by the specified due date, the proposed adjustment will be final. This will simplify what has been an administratively burdensome notification and response process.

Implementation of the above changes to the State Plans for inpatient hospital services and outpatient hospital services is expected to increase annual expenditures of the Wisconsin Medical Assistance Program by \$2.4 million all funds (\$1.4 million federal financial participation and \$1.0 million general purpose revenue) for state fiscal year 1998–1999. This amount is the combination of \$7.0 million all–funds of expected increases and a decrease of \$4.6 million all–funds in general assistance indigent care allowance.

### ***Copies of Proposed Changes and Proposed Payment Rates***

Copies of the proposed changes will be sent to every county social services or human services department main office where they will be available for public review. A publication consisting of proposed DRG weights, DRG base rates, wage indices and other factors that comprise payment rates is available for review and comment. For more information, interested people may fax or write to:

Hospital Unit  
FAX (608) 266–1096  
Bureau of Health Care Financing  
Division of Health  
P. O. Box 309  
Madison, WI 53701–0309

### ***Written Comments***

Written comments on the proposed changes are welcome and should be sent to the above address. The comments received on the changes will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily at:

Bureau of Health Care Financing  
Room 250, State Office Building  
One West Wilson Street  
Madison, WI

## **Public Notice**

*State of Wis. Dept. of Transportation*

### **Public Notice of August 1, 1998 effective date for Sections 58 and 151 of 1997 Wis. Act 84**

Section 85.515, Stats., as created by Section 1g of 1997 Wis. Act 84 (“the Act”), permits the Secretary of the Department of Transportation to implement provisions of the Act as the Department’s computerized information systems become operational.

Section 168(2) of the Act changes ss. 351.02 (1) (a) 4. and 10. and 351.11, Stats., effective **August 1, 1998**. These provisions affect the method by which the Department determines whether a person is a habitual traffic offender.

The Department’s computerized information systems will also be able to implement the statutory changes set forth in sections 58 and 151 of the Act simultaneously with those habitual traffic offender law changes. In addition, it will be cost effective for the Department to implement sections 58 and 151 of the Act with the provisions made effective by section 168 (2) of the act. Section 58 requires the Department to assess three demerit points for a conviction of operating after revocation or suspension. Section 151 requires the Department to permit drivers whose licenses were recently revoked under the habitual traffic offender law to have their driver record reviewed a second time in light of the changes Act 84 made to that law.

By this public notice, and under the authority of s. 85.515, Stats., as created by Section 1g of 1997 Wis. Act 84, Charles H. Thompson, Secretary of the Wisconsin Department of Transportation, declares that sections 58 and 151 of 1997 Wis. Act 84 shall be effective on **August 1, 1998**.

**Contact Information**

For information regarding this notice, contact:

Compliance and Restoration Section  
Division of Motor Vehicles  
Telephone: (608) 266-2261  
FAX: (608) 267-3812  
P.O. Box 7917  
Madison, WI 53707



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